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**[EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE § 6103]**

Attorneys for Defendants
CITY OF PALOS VERDES ESTATES and
CHIEF OF POLICE JEFF KEPLEY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA; WESTERN DIVISION**

CORY SPENCER, an individual;
DIANA MILENA REED, an
individual; and COASTAL
PROTECTION RANGERS, INC., a
California non-profit public benefit
corporation,

Plaintiffs,

v.

LUNADA BAY BOYS; THE
INDIVIDUAL MEMBERS OF
THE LUNADA BAY BOYS,
including but not limited to SANG
LEE, BRANT BLAKEMAN,
ALAN JOHNSTON aka JALIAN
JOHNSTON, MICHAEL RAE
PAPAYANS, ANGELO
FERRARA, FRANK FERRARA,
CHARLIE FERRARA and N.F.;
CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE
JEFF KEPLEY, in his
representative capacity; and DOES
1-10,

Defendants.

Case No. 2:16-cv-02129-MWF-RAO

Assigned to
District Judge: Hon. Michael W.
Fitzgerald
Courtroom: 5A First Street Courthouse

Assigned Discovery:
Magistrate Judge: Hon. Rozella A. Oliver

**[EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE §
6103]**

**SUPPLEMENTAL REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF DEFENDANTS CITY OF PALOS
VERDES ESTATES AND CHIEF OF
POLICE JEFF KEPLEY'S SUR-
REPLY TO PLAINTIFFS' MOTION
TO STAY ENFORCEMENT OF
COSTS JUDGMENT**

Vacated Date: July 20, 2020

Complaint Filed: March 29, 2016
Trial: N/A

Defendants CITY OF PALOS VERDES ESTATES and CHIEF OF POLICE, JEFF KEPLEY (“Defendants”) request pursuant to Federal Rules of Evidence, Rule 201, that this Court take judicial notice of the following documents in connection with the Defendants’ Sur-Reply to Plaintiffs’ Motion to Stay Enforcement of Costs Judgment. Exhibits A through C are judicially noticeable under Rule 201 because they are matters of public record contained in public court filings. Rule 201 permits the district court to take judicial notice of facts that are “not subject to reasonable dispute because [they] . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

EXHIBIT

DOCUMENT

A

A true and correct copy of the July 14, 2020 Order Granting Defendant City of Palos Verdes Estates’ (“City”) Motion for Judgment on the Pleadings with Leave to Amend in *Spencer, et al. v. Lunada Bay Boys, et al.*, Case No. BC629596 (Los Angeles County Superior Court)

B

A true and correct copy of the Court’s July 14, 2020 Minute Order granting Defendant’s Motion for Judgment on the Pleadings in *Spencer, et al. v. Lunada Bay Boys, et al.*, Case No. BC629596 (Los Angeles County Superior Court)

C

A true and correct copy of the Reporter’s Transcript of Proceedings from the July 9, 2020 hearing on the City’s Motion for Judgment on the Pleadings in *Spencer, et al. v. Lunada Bay Boys, et al.*, Case No. BC629596 (Los Angeles County Superior Court)

1 Dated: July 15, 2020

KUTAK ROCK LLP

2 By: /s/ Kevin J. Grochow

3 Edwin J. Richards

4 Antoinette P. Hewitt

5 Christopher D. Glos

6 Kevin J. Grochow

7 Attorneys for Defendants

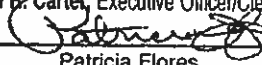
8 CITY OF PALOS VERDES ESTATES

9 and CHIEF OF POLICE JEFF KEPLEY

EXHIBIT A

FILED
Superior Court of California
County of Los Angeles

JUL 14 2020

Sherri B. Carter, Executive Officer/Clerk of Court
By  Deputy
Patricia Flores

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CORY SPENCER, DIANA MILENA
SMOLUCHOWSKA-MIERNIK,
COASTAL PROTECTION RANGERS,
INC., a California non-profit benefit
corporation,

Plaintiffs,

vs.

LUNADA BAY BOYS; THE
INDIVIDUAL MEMBERS OF THE
LUNADA BAY BOYS, including but not
limited to DAVID MELO, CHARLIE
MOWAT, SANG LEE, BRANT
BLAKEMAN, ALAN JOHNSTON,
MICHAEL RAE PAPAYANS, ANGELO
FERRARA, FRANK FERRARA,
CHARLIE FERRARA, TOM SULLIVAN,
JR., BRENDON LAMERS, MICHAEL
THIEL, PAUL HUGOBOOM, CASSIDY
BEUKEMA, DEVON DEMARIA; CITY
OF PALOS VERDES ESTATES; and
DOES 9-100,

Defendants.

Case No.: BC629596

ORDER GRANTING DEFENDANT CITY
OF PALOS VERDES ESTATES'S
MOTION FOR JUDGMENT ON THE
PLEADINGS WITH LEAVE TO AMEND

Hearing Date: July 9, 2020

Time: 2:00 p.m.

Dept.: 7

1 I. Introduction

2
3 Cory Spencer, Diana Milena Smoluchowska-Miernik, and Coastal Protection Rangers, Inc.
4 (collectively, "Plaintiffs") allege a single cause of action in their Fourth Amended Class Action
5 Complaint ("FAC") against Defendant City of Palos Verdes Estates ("City") for violation of the
6 California Coastal Act (the "Act"). The FAC prays for multiple remedies against City. In addition
7 to an award of attorneys' fees, it seeks civil penalties and daily fines. (FAC, pp. 25-26.)

8 City now moves for judgment on the pleadings¹ on the following grounds: (1) Plaintiffs
9 fail to allege facts showing that City violated the Coastal Act, and, regardless, Coastal Act section
10 30005 bars their claim; (2) Plaintiffs both lack standing, and fail to assert a viable Coastal Act
11 Equal Justice Amendment claim; (3) Plaintiffs cannot assert a "conspiracy claim" against City
12 because it is a common law claim barred by Government Code section 815; and (4) Plaintiff
13 Coastal Protection Rangers cannot prosecute the action because it is a suspended corporation.
14 (Motion, 2:10-19.) Plaintiffs oppose City's motion.

15 The Court generally agrees with City that the Coastal Act "does not create any basis for
16 civil liability against a local government entity for failure of a developer to comply with the
17 permitting process [and instead] creates a system of fines and penalties that can be assessed . . .
18 against the developer . . . , not the city who would have issued it." (Reply, pp. 2-3.) As set for the
19 below, the Court GRANTS City's motion.

20
21
22 ¹ City previously demurred to Plaintiffs' First Amended Complaint on the following grounds: (1) collateral
23 estoppel, based on Plaintiffs' unsuccessful federal action against City; (2) the Act's Equal Justice Amendment does
24 not apply retroactively; (3) Plaintiffs' pleading is uncertain regarding the groups needing protection from the alleged
25 Coastal Act violations; (4) Plaintiffs improperly seek declaratory relief for past wrongs; (5) the statute of limitations
26 time-bars Plaintiffs' claims; and (6) the court lacks jurisdiction. On January 28, 2019, the Court overruled City's
27 demurrer on all grounds except ground (3), uncertain pleading. Accordingly, the Court granted Plaintiffs leave to
28 amend their complaint "so that it is clearer who is alleged to have been harmed by Defendants, and to clarify that
Plaintiffs are not bringing their [Coastal Act] claim against the City on behalf of a putative class." (Court's Ruling on
Submitted Matter (Jan. 28, 2019) 4.)

II. Plaintiffs' Allegations Against City Are Based on Three Categories of Conduct: (A) Allowing Others to Erect Unpermitted Structures, (B) Selective Law Enforcement, and (C) Harassment.

Plaintiffs' only cause of action against City alleges violations of the Coastal Act.² (FAC, 19:13-14.) As detailed below, their claims are based on three categories of alleged conduct: (A) allegedly building or allowing others to build unpermitted structures on the beach (e.g., FAC ¶¶ 2, 86); (B) selectively enforcing motor vehicle and anti-harassment laws to discourage outsiders (FAC, ¶¶ 16, 52, 56, 61, 94); and (C) harassing or conspiring to harass outsiders with physical assaults, batteries, vandalism, nuisances and other unlawful acts (FAC, ¶ 16).

A. Allegedly Allowing or Condoning Others to Build Structures on the Beach.

Plaintiffs complain that City has "allowed" and "condoned" the other Defendants' beach structure "development" by failing to enforce the Coastal Act's development permit requirement. Specifically, the FAC alleges:

2. The City has violated the Act by: (a) **allowing** unpermitted structures . . . built and maintained by the [Bay Boys] and its individual Defendant members (FAC, ¶ 2 (emphasis added).)

86. City has impermissibly engaged in or allowed development in the coastal zone **by allowing the construction of the Rock Fort, and tacitly permitting and encouraging the Bay Boys' conduct, which changes the density and/or intensity of use** by impeding access. (FAC, ¶ 86 (emphasis added).)

87. On the north side of Lunada Bay, the Bay Boys . . . built and maintained the illegal Rock Fort. The City was long **aware of** [the Rock Fort] and **only removed the structure in late 2016**. . . . [T]he Bay Boys have since undertaken efforts to rebuild a structure in its place on City property. (FAC, ¶ 87 (emphasis added).)

² Although the FAC alleges City conspired with the other Defendants, it specifies that City's "civil conspiracy . . . [is] as to the Coastal Act only." (FAC, ¶ 78.)

1 88. Defendant Bay Boys and Individual Defendants built a campfire ring on City
2 property . . . which was removed by the City in late 2016 . . . (FAC, ¶ 88.)

3 89. Defendants also built and keep [trails and a campfire ring] on City property. (FAC,
4 ¶ 89.)

5 92. [T]here are or were several **unpermitted structures** at [other beaches] on City-
6 owned property. (FAC, ¶ 92 (emphasis added).)

7 64. On January 21, 2016, the **California Coastal Commission [informed the police**
8 **chief]** that . . . City must address unpermitted structures . . . and again **urged the City to**
9 **address public access.** (FAC, ¶ 64 (emphasis added).)

10 65. In response . . . [City] issued a memorandum recommending that a public hearing
11 to discuss removal of the unpermitted Rock Fort. (FAC, ¶ 65.)

12 B. Allegedly Selective Enforcement of Motor Vehicle Laws against Outsiders and
13 Non-enforcement of Anti-Harassment Laws against Bay Boys.
14

15 Regarding the City's allegedly selective enforcement of motor vehicle and non-
16 enforcement of anti-harassment laws, the FAC alleges:

17 2. The City has violated the Act by . . . (c) **enforcing municipal and other laws in a**
18 **discriminatory manner that deters visitors; and allowing the Bay Boys to unlawfully**
19 **exclude the public.** (FAC, ¶ 2 (emphasis added).)

20 16. . . . **City has long known** about the Coastal Act violations, which continue in
21 Lunada Bay and other areas of PVE [and] . . . has **condoned and conspired with** [the other
22 Defendants] **to exclude underrepresented persons from its coastline by targeting them**
23 **with unfavorable treatment for traffic citations, parking tickets, and towed vehicles.**
(FAC, ¶ 16 (emphasis added).)

24 94. To deter outsiders in violation of the Coastal Act, **the City has targeted outsiders**
25 **with unfavorable treatment [by] deterring outsiders from filing complaints, and in a**
26 **disproportionate manner, issuing traffic citations, parking tickets, towing vehicles,**
27 **and detaining outsiders in disproportionate numbers.** (FAC, ¶ 94.) 46. In or about
28 2015, the City hired a new police chief, Jeff Kepley [who said] . . . [City] would "make an
example out of anyone who behaves criminally" at Lunada Bay. (FAC, ¶ 46 (emphasis
added).)

1
2 47. **[R]ather than hold the Bay Boys accountable**, the City opted for a "community
3 policing" approach to develop an even cozier relationship with the Bay Boys. (FAC, ¶ 47
(emphasis added).)

4 52. Also on January 29, 2016, Plaintiff Miernik [was] targeted [and] confronted by
5 Melo, who maliciously confronted them screamed at them . . . **City police officers**
6 **observed the incident but took no action** . . . (FAC, ¶ 52 (emphasis added).)

7 56. Also on February 12, 2016, [Defendant] Thiel . . . told City Manager Dahlerbruch
8 that he was aware of an undercover police operation scheduled to occur at Lunada Bay . .
9 . [f]ollowing the meeting, [City] **canceled the operation**. (FAC, ¶ 56 (emphasis added).)

10 62. [City Police Chief Kepley said,] "I wish [Lunada Bay] was safe, but it's not. I
11 wouldn't even tell a man to go down there . . . I view this as a long term problem." (FAC,
12 ¶ 62.)

13 64. On January 21, 2016, the California Coastal Commission [informed the police
14 chief] that . . . "threatening behavior intended to discourage public use of the coastline"
15 amounts to a violation of the LCP. . . (FAC, ¶ 64.)

16 86. City has impermissibly engaged in or allowed development in the coastal zone by
17 allowing the construction of the Rock Fort and **tacitly permitting and encouraging the**
18 **Bay Boys' conduct, which changes the density and/or intensity of use** by impeding
19 access. (FAC, ¶ 86 (emphasis added).)

20 C. Alleged Harassment of Outsiders

21 Regarding the City's alleged harassment of outsiders, Plaintiffs allege:

22 3. The City . . . has long been **aware** of the unlawful exclusion of outsiders and has
23 conspired with the Bay Boys to "protect" Lunada Bay. (FAC, ¶ 3 (emphasis added).)

24 4. **With City knowledge and complicity**, the individual Defendant members of the
25 Bay Boys conspired to keep the public away by: (1) physically obstructing outsiders'
26 access to the beach trails; (2) throwing rocks; (3) running people over with surfboards in
27 the water; (4) punching outsiders; (5) stealing outsiders' wallets, wetsuits, and surfboards;
28 (6) vandalizing vehicles, slashing tires, and waxing pejorative slurs onto vehicle windows;
(7) levying threats; and (8) intimidating outsiders with pejorative and other verbal insults,
gestures, and threats of serious injury. (FAC, ¶ 4 (emphasis added).)

1 16. [T]he City has condoned and **conspired with the Individual Defendants' and**
2 **Defendant Bay Boys' threatening behavior discouraging outsiders** from accessing
3 Lunada Bay” (FAC, ¶ 16 (emphasis added).)

4 93. **With City complicity, [Defendants] conspire to and do regularly confront,**
5 **attack, harass and assault people attempting to access the beach [or] pass[ing] through**
6 the Lunada Bay area [,] for the primary purpose of preventing those people from accessing
the beach area . . . (FAC, ¶ 93 (emphasis added).)

7 D. Civil Conspiracy Allegations

8 In addition to the conspiracy allegations in paragraphs Plaintiffs 4, 16 and 93 quoted above,
9 Plaintiffs allege City “[has] engaged in a civil conspiracy with the other Defendants as to the
10 Coastal Act only.” (FAC, ¶ 78.)

11 79. Defendant Bay Boys’ members . . . [i]n violation of the Coastal Act, municipal
12 ordinances, and other laws . . . regularly confront, harass, assault, and batter people
13 attempting to access the beach, and confront, threaten, assault, vandalize property, and
14 bring harm to other persons who live in, work in, or pass through the Lunada Bay area for
the purpose of preventing full and equal access . . . (FAC, ¶ 79.)

15 81. Each of the Defendants [including City] **was aware that members of the Bay**
16 **Boys planned to engage in the illegal activities detailed above, cooperated and/or**
17 **agreed to cooperate with members of the Bay Boys, and intended that the illegal**
18 **activities be committed.** (FAC, ¶ 81 (emphasis added).)

19 82. Based on the circumstances described above, including the nature of the acts done,
20 the relationships between Defendants, and the interests of Defendants, each of the
Defendants engaged in a civil conspiracy, which is ongoing. (FAC, ¶ 82.)

21 84. The actions and inaction of the City . . . violate the California Coastal Act . . . [and
22 the] Environmental Justice Amendment . . . (FAC, ¶ 84 (emphasis added).)

23 III. Legal Standard: Motion for Judgment on the Pleadings

24 “A motion for judgment on the pleadings is akin to a general demurrer; it tests the
25 sufficiency of the complaint to state a cause of action.” (*Wise v. Pacific Gas and Elec. Co.* (2005)
26 132 Cal.App.4th 725, 738; *Kapsimallis v. Allstate Insurance Co.* (2002) 104 Cal.App.4th 667,
27 672.) A defendant may move for judgment on the pleadings on the ground that the plaintiff’s
28

1 complaint “does not state facts sufficient to constitute a cause of action” against the defendant.
2 (Cal. Code Civ. Proc. § 438(c)(1)(B)(ii).)

3 The motion’s grounds must “appear on the face of the challenged pleading or from any
4 matter of which the court is required to take judicial notice.” (Cal. Code Civ. Proc. § 438(d).) The
5 court accepts as true all material facts alleged in the challenged pleading, but does not consider
6 legal or factual conclusions, opinions, speculation, or allegations contrary to judicially-noticed law
7 or facts. (*Bettencourt v. Hennessy Industries, Inc.* (2012) 205 Cal.App.4th 1103, 1111.)

8 A court must deny a motion for judgment if the pleading states, under any theory, a cause
9 of action. (*Hudson v. County of Los Angeles* (2014) 232 Cal.App.4th 392, 408
10 [citing *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38 (“If the complaint
11 states a cause of action under any theory, regardless of the title under which the factual basis for
12 relief is stated, that aspect of the complaint is good against a demurrer.”)]).

13
14 IV. Plaintiffs Fail to State a Cause of Action Against City for Violating the Coastal Act.

15
16 City contends that Plaintiffs fail to allege facts sufficient to state an actionable claim for
17 violation of the Coastal Act. City advances several arguments to support this contention, but its
18 main argument is that Plaintiffs fail to allege City has performed or undertaken development as
19 defined by the Act. The Court agrees.

20 Coastal Act section 30820 imposes civil liability on “any person” who “performs or
21 undertakes development that is in violation of [the Act].” Section 30804 permits “[a]ny person”
22 to maintain an action to enforce “the duties specifically imposed upon . . . any local government .
23 . . .” by the Act. As noted above, Plaintiffs’ allegations against City describe three categories of
24 conduct: constructing structures, selective code enforcement, and harassment. The Court
25 addresses each category of conduct below.
26
27
28

1 A. Plaintiffs Fail to Allege a Violation of the Coastal Act Based on the Erection of
2 Structures or Failure to Require Permits for Structures.

3
4 1. Plaintiffs Do Not Allege City Itself Performed or Undertook Development of
5 Structures.

6
7
8 Plaintiffs have not alleged City employees either were present or physically participated in
9 erecting the Rock Fort, fire pits, and other structures that other Defendants allegedly built on the
10 beach. Plaintiffs instead seek to hold City liable for passive behavior: condoning or “allowing
11 unpermitted development in the coastal zone.” (Opp., 14:15-16; 18-19.) City counters that “the
12 language and legislative history [of the Coastal Act] demonstrate no intent to impose liability
13 against a coastal city for the acts of private citizens even if those acts deter other private citizens
14 from visiting the coast.” (Motion, p. 9.) The Court agrees with City.

15 In interpreting a statute, a court’s “fundamental task” is to “ascertain the aim and goal of
16 the lawmakers so as to effectuate the purpose of the statute.” (*Gualala Festivals Committee v.*
17 *California Coastal Commission* (2010) 183 Cal.App.4th 60, 67.) Courts first examine the statute’s
18 “usual and ordinary meaning”; if the meaning is not ambiguous, courts “presume that the
19 lawmakers meant what they said, and the plain meaning of the language governs.” (*Ibid.*)

20 The Coastal Act requires “any person . . . wishing to *perform* or *undertake* development”
21 to obtain a Permit. (Pub. Res. Code § 30600(a) (italics added).) The words “perform” and
22 “undertake” are reasonably interpreted to mean active participation in development rather than
23 passive “condoning” or “allowing” others to “perform” or “undertake” development. The FAC’s
24 allegations regarding beach structures therefore fail allege that City performed or undertook the
25 development of those structures.

26 Plaintiffs’ conspiracy allegations do state an actionable claim. “The sine qua non of a
27 conspiratorial agreement is the knowledge on the part of the alleged conspirators of its unlawful
28 objective and their intent to aid in achieving that objective.” (*Schick v. Lerner* (1987) 193

1 Cal.App.3d 1321, 1327-78.) Plaintiffs must make “a showing of knowledge of the planned tort
2 and intent to aid in its commission.” (5 Witkin, Summary 11th Torts § 153 (2019) citing *Wyatt v.*
3 *Union Mrtg. Co.* (1979) 24 Cal.3d 773, 784-85.) The FAC’s allegations City condoned or failed
4 to take action *after* the structures were in place are antithetical to the required proof that City tacitly
5 or expressly agreed on a plan to erect the structures *before* they were built. Although the FAC
6 includes an allegation that “[e]ach of the Defendants was aware that members of the Bay Boys
7 planned to engage in the illegal activities detailed above, cooperated and/or agreed to cooperate
8 with members of the Bay Boys, and intended that the illegal activities be committed,” this
9 boilerplate allegation apparently refers to the conduct “detailed” in the preceding sentence which
10 identifies alleged harassment rather than the erection of beach structures. (FAC, ¶ 81.) To the
11 extent Plaintiffs intended to incorporate City’s conduct related to the unpermitted structures, their
12 allegations contradict the more specific allegations and are too vague to state a claim against City
13 based on conspiracy to violate the Coastal Act.

14 Citing *Feduniak v. Coastal Commission* (2007) 148 Cal.App.4th 1346, Plaintiff’s counsel
15 argues City can be liable for unpermitted development on its land even if City was not responsible
16 for constructing it. In *Feduniak*, the Commission issued a cease and desist order requiring
17 homeowners to comply with native vegetation landscaping conditions on a coastal development
18 permit issued to the former owners of the Feduniak’s residential property. The former owners
19 agreed to comply with the conditions but later breached them by building a three-hole golf course.
20 The Feduniaks petitioned for a writ of mandate reversing the cease and desist order. The trial court
21 denied the petition but agreed with the Feduniaks that the Commission’s inaction on the permit
22 conditions for eighteen years estopped the Commission from enforcing them. The appellate court
23 reversed, finding among other things, that the Commission had no duty to inspect the land or take
24 action against the homeowners.

25 *Feduniak* is distinguishable. The Feduniaks were not “strictly liable” for the former
26 owners’ unlawful development. They were responsible because the coastal permit conditions were
27 duly recorded when they were issued and therefore applied to the Feduniaks as well as the former
28 owners.

1 Plaintiff also argue the *Leslie Salt Co. v. San Francisco Bay Conservation & Development*
2 *Commission* (1984) 153 Cal.App.3d 605, provides authority for holding the City liable for
3 development on its land effectuated by third parties. In *Leslie Salt*, the San Francisco Bay
4 Conservation and Development Commission issued a cease and desist order requiring a landowner
5 to remove fill material dumped on its property by unknown third persons. The landowner filed a
6 petition for writ of mandate seeking to reverse the Commission's order. The court held that the
7 McAteer-Petris Act, which created the Commission, gave it the authority to hold the landowner
8 responsible. This case is distinguishable because it addresses a writ of mandate for an order not
9 issued by the Coastal Commission and not involving the Coastal Act.

10 Therefore, Plaintiffs' cause of action against City based on its alleged erection or
11 conspiracy to erect unpermitted structures on the beach fails to state an actionable claim. The Court
12 grants Plaintiffs leave to amend to allege facts supporting an actionable claim, i.e., that City agents
13 or employees built unlawful structures on the beach and/or entered into advance agreements to
14 have other defendants construct them.

15
16 2. *City's Alleged Failure to Require Development Permits Is Not Actionable*
17 *Under the Coastal Act.*
18

19 Plaintiffs' allegation that City has failed to enforce the Coastal Act against other
20 Defendants who built structures on the beach is non-actionable because City has no mandatory
21 duty to enforce the Coastal Act. The California Supreme Court in *Yost v. Thomas* (1984) 36 Cal.3d
22 561, 572 concluded the Act "does not mandate the action to be taken by a local government in
23 implementing local land use controls." Instead, it sets "minimum standards and policies" with
24 which a local government's local coastal plan must comply, and once the Commission has
25 approved a government's LCP it then "has discretion to choose what action to take to implement
26 its LCP . . . [and] [t]he act, therefore, leaves wide discretion to a local government not only to
27 determine the contents of its land use plans, but to choose how to implement these plans." (*Id.* at
28 pp. 572-573; see also *Bottini v. City of San Diego* (2018) 27 Cal.App.5th 281, 317, review

1 dismissed, cause remanded April 10, 2019 [holding that there is no property right in a discretionary
2 permit that has not yet been issued because “[t]he Coastal Act sets only minimum standards and
3 policies and creates no mandatory duty to issue development permits”; *Lindstrom v. California*
4 *Coastal Commission* (2019) 40 Cal.App.5th 73, 91 [the Coastal Act “requires local governments
5 to develop [LCPs], comprised of a land use plan and a set of implementing ordinances designed to
6 promote the act’s objectives . . .”] (bracketing original); contra *Venice Town Council, Inc. v. City*
7 *of Los Angeles* (1996) 47 Cal.App.4th 1547, 1552-1553 [holding that the Mello Act imposes
8 mandatory duties on local governments having coastal zones with its express language that “[e]ach
9 respective local government *shall comply . . .*” and “[t]he conversion or demolition of existing
10 residential dwelling units occupied by persons and families of low or moderate income . . . *shall*
11 *not be authorized . . .*] (italics added).)

12 Government Code section 815.6’s definition of ‘mandatory duty’ informs. That section
13 imposes liability on a public entity for its failure to discharge a statutorily-imposed mandatory
14 duty. A mandatory duty is not created by a statute that requires a public entity to perform a function
15 involving its “exercise of discretion.” (*Guzman v. County of Monterey* (2009) 46 Cal.4th 887,
16 898.) Nor is a mandatory duty created by a statute that “merely recites legislative goals and
17 policies that must be implemented through a public agency’s exercise of discretion” or a statute
18 that commands an act open to “normative or qualitative debate” over whether the act was
19 adequately completed. (*Jacqueline T. v. Alameda County Child Protective Services* (2007) 155
20 Cal.App.4th 456, 470-471; *Lawson v. Superior Court* (2010) 180 Cal.App.4th 1372, 1392.)
21 Affirmatively, a mandatory duty must be statutorily imposed in “explicit and forceful language”
22 that requires the public entity to take a “clear and discrete” action that requires “no evaluation” of
23 whether the public entity took the action. (*Guzman, supra*, at p. 910; *Lawson, supra*, at p. 1392;
24 see also *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 501 [city ordinance imposed
25 mandatory duty by prescribing that “the Superintendent of Building *shall* also file . . .”] (italics
26 added).)

27 Applying these principles, the Coastal Act does not impose a mandatory duty on City to
28 enforce permitting requirements. As discussed above, it leaves “wide discretion to a local

1 government not only to determine the contents of its land use plans, but to choose how to
2 implement these plans.” (*Yost v. Thomas, supra*, 36 Cal.3d at pp. 572-573.) It sets “minimum
3 standards and policies” with which a local government’s local coastal plan must comply. (*Ibid.*)
4 But it lacks “explicit and forceful language” that requires City to take a “clear and discrete action”
5 to ensure “any person . . . wishing to perform or undertake development” obtain Permits. (Cal.
6 Pub. Res. Code § 30600(a).) Instead, it imposes an affirmative duty on the “person . . . wishing to
7 perform or undertake development” by prescribing that any such person “shall obtain a coastal
8 development permit.” (*Ibid.*)

9 In addition, section 30811, “Restoration order; violations” provides, in part, that “a local
10 government that is implementing a certified local coastal program . . . *may*, after a public hearing,
11 order restoration of a site if it finds that the development has occurred without a coastal
12 development permit . . .” (italics added). The word “may” underscores that enforcement is
13 discretionary rather than mandatory.

14 Furthermore, the Coastal Act’s government liability language mirrors Government Code
15 section 815.6’s requirement that a statute impose a mandatory duty in “explicit and forceful
16 language” by permitting “any person” to “maintain an action to enforce the duties *specifically*
17 *imposed* [by the Act] upon . . . any governmental agency . . .” (*Guzman v. County of Monterey,*
18 *supra*, 46 Cal.4th at p. 910; Cal. Pub. Res. Code § 30804 (italics added).)

19 The Court does not agree with Plaintiffs that *Greenfield v. Mandalay Shores Community*
20 *Assn.* (2018) 21 Cal.App.5th 896 establishes that the Coastal Act imposes mandatory enforcement
21 duties on City. In that case, the issue was whether a homeowners’ association had the power to
22 ban its member homeowners from renting out their properties to short term tenants. (*Id.* at p.
23 898.) The homeowners sought to enjoin the association’s ban because it was “development” under
24 the Coastal Act and thus the association first needed to obtain a Permit. (*Ibid.*) The Court of
25 Appeal agreed, relying on Coastal Act section 30803, subd. (a) as requiring *a court* to issue
26 preliminary equitable relief upon a prima facie showing of a Coastal Act violation. (*Id.* at p. 902.)
27 *Greenfield* did not address City’s discretionary decision to enforce or not enforce Act provisions,
28

1 only that the ban was “development” and thus “a matter for the City and Coastal Commission to
2 address” upon the homeowners’ association’s permit application. (*Id.* at p. 901.)

3 Therefore, Plaintiffs’ allegations that City failed to enforce the Coastal Act against the
4 other Defendants who built structures on the beach are not actionable under the Coastal Act.

5
6
7 B. City’s Discretionary Enforcement of Motor Vehicle and Anti-Harassment Laws is
8 Not Coastal Act “Development.”

9
10 1. *Motor Vehicle Code Enforcement and Alleged Failures to Enforce Anti-*
11 *Harassment Laws Are Not Uses of Land.*
12

13 The second category of City’s alleged Coastal Act violations includes City’s active law
14 enforcement efforts, specifically its issuance of vehicle citations and towing of cars in a manner
15 that “exclude(s) underrepresented persons from its coastline” and alleged failure to police
16 harassment directed to outsiders. (FAC, ¶¶ 16, 94, 52, 56, 61.) City argues that this conduct is not
17 “development” and the Court agrees.

18 The word “development” is commonly defined as “the process of converting land to a new
19 purpose by constructing buildings or making use of its resources.” (Oxford English Dictionary,
20 www.lexico.com). It is not reasonable to interpret “development” to encompass a City’s
21 enforcement or non-enforcement of vehicle or anti-harassment laws.
22

23 The Coastal Act’s definition of “development” in section 30106 describes various activities
24 that fit within this common definition of “development.” None of them describe the enforcement
25 or nonenforcement of laws by police agencies.

26 **Development” means, on land,** in or under water, the placement or erection of any solid
27 material or structure; discharge or disposal of any dredged material or of any gaseous,
28 liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any
materials; **change in the density or intensity of use of land, including, but not limited**
to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410

1 of the Government Code), and any other division of land, including lot splits, except
2 where the land division is brought about in connection with the purchase of such land
3 by a public agency for public recreational use; change in the intensity of use of water,
4 or of access thereto; construction, reconstruction, demolition, or alteration of the size of
5 any structure, including any facility of any private, public, or municipal utility; and the
6 removal or harvesting of major vegetation other than for agricultural purposes, kelp
7 harvesting, and timber operations which are in accordance with a timber harvesting plan
8 submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973
9 (commencing with Section 4511).

10 As used in this section, "structure" includes, but is not limited to, any building, road, pipe,
11 flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and
12 distribution line.

13 (Pub. Res. Code § 30106 (emphasis added).) The Legislature's references to "use of land" and
14 "use of water" underscore its focus on land use.

15 (i) "change in the density or intensity of **use of land** including, but not limited to,
16 subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the
17 Government Code), and any other division of land, including lot splits, except where the
18 land division is brought about in connection with the purchase of such land by a public
19 agency for public recreational use;" and

20 (ii) "change in intensity of **use of water** or access thereto."

21 As City points out, "[t]he extensive legislative history of the Coastal Act is filled with
22 references to restraining construction on the coast, preserving the last unbuilt coast for the public
23 to enjoy, preserving coastal resources, and providing for access through easements." (Motion,
24 9:13-15.) According to City, "the legislative history shows the purpose of the Act was to balance
25 construction interests or other private property interests against conservation of resources and
26 provision of easements across private developments . . . [but] demonstrates no intent to impose
27 liability against a coastal city for the acts of private citizens even if those acts deter other private
28 citizens from visiting the coast." (*Id.* at 9:21-25.) "There is no doubt that the Coastal Act is an
attempt to deal with coastal land use on a statewide basis." (*Yost v. Thomas, supra*, 36 Cal.3d at
p. 571.)

Moreover, the terms “use,” “land use,” and “use of land” have “generally well-accepted meaning in planning and land use law.” (*Building Industry Legal Defense Foundation v. Superior Court* (1999) 72 Cal.App.4th 1410, 1416.) *Building Industry Legal Defense Foundation* analyzed California’s Planning and Zoning Law’s meaning of “use.” Specifically, the court examined Government Code section 65858 which allows a city to adopt, as an urgency measure, an interim ordinance “prohibiting any *uses* which may be in conflict with” a contemplated but not yet adopted general plan. The term “use” was not defined in section 65858. To interpret the term “use,” the court referred to Government Code section 65850 of the Planning and Zoning Law which empowers cities to regulate land based on “the use of buildings, structures, and land” as between competing purposes including “industry, business, residences, open space including agriculture, recreation, enjoyment of scenic beauty, use of natural resources and other purposes” and to “regulate signs and billboards,” “intensity of land use” and “requirements for offstreet parking.” Referring to section 65850, the court defined “use” in section 65858 according to its “generally well-accepted meaning”:

Pursuant to its police power, a general law city is permitted to “[r]egulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.” (Gov.Code, § 65850, subd. (a).) This provision allows a city to classify, exclude, restrict, and limit what a land owner may do with his or her property, subject of course to certain constitutional constraints. (*Euclid v. Ambler* (1926) 272 U.S. 365, 394–395, 47 S.Ct. 114, 71 L.Ed. 303; see also 8 McQuillin, *Municipal Corporations* (1991) Zoning, §§ 25.119–25.119.10, pp. 462–467; California Zoning Practice (Cont.Ed.Bar 1969) Types of Zones, §§ 6.4–6.32, pp. 200–219.) In day-to-day terms, this means a city may determine where residential, commercial, industrial, and other uses may be located within the city.

(*Id.* at p. 1416.)

“Use,” as interpreted by *Building Industry Legal Defense Foundation*, applies equally to “use” and “use of land” in Coastal Act Section 30106.³ Three reasons support adopting this interpretation. First, the California Supreme Court has identified the Act’s intent and purpose as

³ The Coastal Act uses the term “land use” approximately 75 times.

1 regulation of “coastal *land use* on a statewide basis.” (*Yost v. Thomas, supra*, 36 Cal.3d at p. 571
2 (italics added).) Second, the Act requires cities to develop and submit to the Coastal Commission
3 local coastal programs that are comprised of “a *land use plan*” along with “zoning ordinances [and]
4 zoning district maps” (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles,*
5 *supra*, 55 Cal.4th at p. 794 (italics added); Pub. Res. Code §§ 30511, 30512(a), 30108.6 [“The
6 *land use* plan of a proposed local coastal program shall be submitted to the commission”] (italics
7 added); [“Local coastal program” means a local government’s (a) *land use* plans, zoning
8 ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other
9 implementing actions, which, when taken together, meet the requirements of, and implement the
10 provisions and policies of, [the Coastal Act] at the local level”] (italics added).) Third, and as City
11 notes, the Act section 30106 modifies “use of land” with language that references traditional
12 government land use concerns: “including, but not limited to, subdivision pursuant to the
13 Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other
14 division of land, including lot splits, except where the land division is brought about in connection
15 with the purchase of such land by a public agency for public recreational use.” (Motion, 11:20-
16 25.)

17 This Court therefore interprets “use” and “use of land” to mean “use of buildings, structures
18 or land,” erection of signage, provision of off-street parking and other conduct subject to City’s
19 power to regulate land use under Government Code Section 65850. It is not reasonable to interpret
20 “use” or “use of land” to include municipal enforcement of vehicle laws or failure to enforce anti-
21 harassment laws.

22
23
24 2. *Law Enforcement Is Not a “Change in the Intensity of Use” or “Access” to Water.*
25

26 Plaintiffs also fail to allege an actionable claim based on the other potentially applicable
27 provision in the Coastal Act’s definition of development: “change in intensity of use of water or
28 access thereto.” (Pub. Res. Code § 30106.) As a preliminary matter, Plaintiffs’ vehicle code

1 allegations fail because they do not identify conduct by City that blocked or impeded access to
2 water. Selectively enforcing vehicle code laws against “outsiders” may or may not impact access
3 to water; it depends on whether the “outsiders” visited City to go to the water or for some other
4 purpose. As City points out, Plaintiffs do not allege that City’s anti-outsider enforcement efforts
5 “even took place in the coastal zone,” let alone impeded their access to water. (Motion, 14:14-
6 15.) The allegations therefore fail to state a viable claim for violation of the Coastal Act based on
7 “development” defined as “change in intensity of use of water or access thereto.”

8 As noted above, it is also not reasonable to interpret “development” under section 30106
9 to include City’s “selective enforcement” of vehicle and anti-harassment. As with the terms “use”
10 and “use of land” found elsewhere in section 30106, the Court interprets “use of water” in the
11 sense of the “uses” that Govt. Code section 65850 empowers cities to regulate. Water is one of
12 the “natural resources” and source of “scenic beauty” cities may consider as they regulate “the use
13 of buildings, structures, and land as between industry, business, residences, open space . . . ,
14 recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.” (Govt. Code
15 § 65850, subd. (a).) Erection of structures or other tangible barriers are “development” if they
16 physically block or impede access to water. City’s conduct in enforcing or not enforcing vehicle
17 or anti-harassment laws is not “development” because it involves interpersonal contact rather than
18 any physical barrier to access and because these laws regulate personal conduct rather than “the
19 use of buildings, structures and land” as between competing uses.

20
21 3. Case Law Does Not Support Plaintiffs’ Interpretation

22 Plaintiffs have cited no cases interpreting “use of land” or “change in intensity of use of
23 water or access thereto” as embracing selective enforcement of vehicle code or anti-harassment
24 laws. None of the cases cited by Plaintiffs interpret “use of land” or “access to water” under
25 section 30601 to include conduct analogous to City’s alleged conduct in this case. To the contrary,
26 these cases either rest on provisions in section 30601 that do not apply to this case or address
27 conduct typically subject to municipal land use regulation under Government Code section 65850.
28

1 For example, the decision in *Gualala Festivals Committee v. California Coastal*
2 *Commission, supra*, 183 Cal.App.4th 60 rested on a specific phrase in section 30106 defining
3 “development” as the “discharge . . . of any . . . gaseous . . . [or] solid . . . waste.” In that case, a
4 festivals committee challenged the Coastal Commission’s intended order prohibiting the
5 committee from discharging fireworks without a coastal development permit. (*Id.* at p. 63.) The
6 trial court rejected the committee’s contention that the Coastal Commission lacked jurisdiction
7 because a fireworks display was not “development” under the Coastal Act. (*Id.* at pp. 65-66.)
8 Instead, the court found that the prior year’s fireworks display discharged fireworks debris — both
9 solid and gaseous waste — within the coastal zone. (*Id.* at p. 68.) Based on this evidence, the
10 appellate court agreed that the fireworks display met section 30106’s definition of development as
11 the “discharge . . . of any . . . gaseous . . . [or] solid . . . waste.” (*Id.* at p. 71.) That language in
12 the section 30106 “development” definition has no application here.

13 The decision in *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, supra*,
14 55 Cal.4th 783 also rested on language in the Coastal Act’s “development” definition that is
15 inapplicable to this case. The issue was whether converting a mobile home park from tenancies to
16 resident ownerships was “development” under the Coastal Act. (*Id.* at pp. 792-793.) The Court
17 cited several cases, including *Gualala Festivals Committee*, for the general proposition that
18 “development” under the Coastal Act is “not restricted to activities that *physically alter* the land
19 or water.” (*Id.* at p. 796.) But the court based its holding that the conversion was development on
20 the Coastal Act’s express inclusion of “subdivision pursuant to the Subdivision Map Act” and “any
21 other division of land, including lot splits . . .” in “change in the density or intensity of use of land
22” (*Id.* at p. 794.) The court also relied on language in the Subdivision Map Act that
23 “specifically refers to the conversion of a rental mobilehome park to resident ownership as a form
24 of ‘subdivision’. . . .” (*Ibid.*) These “subdivision” provisions of the Coastal Act and the
25 Subdivision Map Act have no application here.

26 The other cases cited by Plaintiffs are inapposite because they each involved a “structure”
27 “on land” that plainly qualified as “development” under section 30106. In *Surfrider Foundation*
28 *v. California Coastal Commission* (1994) 26 Cal.App.4th 151, 154, there was no dispute that the

1 challenged conduct was “development” “on land.” The Coastal Commission issued a coastal use
2 permit allowing the State to erect small structures for collecting beach parking fees. (*Id.* at pp.
3 154-155.) A nonprofit organization challenged the propriety of the permit, arguing that the fees
4 were inconsistent with policies expressed in other provisions of the Act such as section 30211
5 (“[d]evelopment shall not interfere with the public’s right of access to the sea”) and section 30604,
6 subd. (c) (requiring certain permits to include “a specific finding that the development is in
7 conformity with the Coastal Act’s public access and recreation policies.”) (*Id.* at p. 157.) The
8 court agreed that because parking fees fell within the scope of these policies, the Commission had
9 to consider them when it issued the permit. (*Ibid.*) The court cited provisions in the Coastal Plan
10 of 1975 identifying a broad range of traditional land use concerns: “the erection of fences,
11 buildings, and other structures” and “indirect or nonphysical impediments to access, including
12 reduction of road capacity and off-street parking” (*Id.* at p. 158.) Based on this history, the
13 court “conclude[d] that public access and recreational policies of the Coastal Act should be broadly
14 construed to encompass all impediments to access, whether direct or indirect, physical or
15 nonphysical.” (*Ibid.*) The Court affirmed the Coastal Commission’s permit approving the parking
16 fees because it took these policies into account by making specific findings based on statistical
17 “evidence that completely undermin[ed] . . . arguments that the challenged fees will prevent people
18 from using state park beaches.” (*Ibid.*)

19 The *Surfrider* decision provides no guidance because there was no dispute the parking fee
20 devices were “structures” “on land” that qualified as “development” under section 30106. The
21 court’s comments encouraging broad construction referred to the “public access and recreational
22 policies” of the Act, not to the “development” definition. The decision accordingly provides no
23 guidance on the question whether the City’s allegedly selective enforcement of vehicle code laws
24 or anti-harassment laws qualifies as “development” under section 30106.

25 In *Surfrider Foundation v. Martins Beach 1 LLC* (2017) 14 Cal.App.5th 238, the
26 challenged conduct included a structure on land that physically blocked access to water.
27 Specifically, coastal homeowners erected a physical barrier (i.e., closed a gate), posted a “BEACH
28 CLOSED KEEP OUT” sign on the gate, stationed security guards, and painted over a billboard

1 that previously advertised beach access. (*Id.* at p. 247.) The trial court held “appellants’ conduct
2 in closing public access to Martins Beach was ‘development’ under the Coastal act because it
3 decreased access to the water.” (*Id.*, at 252.) The Court of Appeal agreed. (*Id.* at pp. 248-249.)

4 The appellate court noted that “development” under the Coastal Act is not restricted to
5 activities that physically *alter* the land or water, citing *Pacific Palisades* and *Gualala*. (*Id.* at p.
6 252.) It also relied on *Surfrider Foundation v. California Coastal Commission*’s broad dicta that
7 the Act “should be broadly construed to encompass all impediments to access, whether direct or
8 indirect, physical or nonphysical.” (*Ibid*; see also *LT-WR, LLC v. California Coastal Commission*
9 (2012) 151 Cal.App.4th 427, 443, opn. mod. at 152 Cal.App.4th 770 [finding that metal gates and
10 no trespassing signs are “development” subject to the Coastal Commission’s permitting
11 requirement].)

12 Plaintiffs argue that the landowner’s use of security guards was “development” under the
13 Coastal Act, analogous to City’s alleged law enforcement activities in this case. Nothing in the
14 appellate court’s decision supports this argument. The decision cites no evidence of any conduct
15 by the security guards impeding access to the beach. The issue on appeal was whether the closed
16 gate which physically blocked access to the beach without altering the land – was “development.”
17 The decision did not address the question whether interpersonal conduct can constitute
18 “development” under the Coastal Act.

19 In all of these cases, the conduct subjected to Coastal Act regulation was conduct typically
20 addressed by municipal land use regulations. *Gualala Festivals Committee v. California Coastal*
21 *Commission* upheld the Coastal Commission’s regulation of a land use that deposited debris on
22 land. *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* upheld government
23 regulation of subdivision, a traditional land use concern specifically identified in section 30106.
24 In the two *Surfrider* cases and *LT-WR, LLC*, the appellate courts affirmed government regulation
25 under the Coastal Act of traditional land use concerns: structures closing off access to land or water
26 and the regulation of off street parking. None of these cases supports Plaintiffs’ contention that
27 City’s non-land-use regulatory activity – enforcement of vehicle laws against “outsiders” or non-
28 enforcement of anti-harassment laws – qualifies as “development” under the Act.

1 Plaintiffs' reliance on City's law enforcement activities as a violation of the Coastal Act
2 accordingly fails as a matter of law.

3
4
5 C. City's Allegedly Harassing Conduct Is Not Actionable as a Coastal Act Violation.
6

7 The FAC alleges Individual Defendants engaged in "development" (i.e., assaulted,
8 battered, or otherwise personally harassed outsiders) while City condoned it. As discussed infra,
9 the Coastal Act regulates those who "perform" or "undertake" development. The City's conduct
10 in merely standing by as others "perform" or "undertake" alleged development is not actionable.⁴

11 Even if Plaintiffs had directly alleged that City employees assaulted or battered Plaintiffs,
12 this Court would conclude that such conduct is not actionable under the Coastal Act because it is
13 not "development" under the Coastal Act even if the perpetrator is motivated by a desire to deny
14 access to or use of water. As noted above, the "uses" the Act was designed to address are
15 reasonably interpreted to refer to the "uses" cities may regulate under Government Code section
16 65860. Such "uses" do not include ordinary criminal or tortious conduct. Plaintiffs have cited no
17 legislative history suggesting that, in addition to the criminal and civil remedies already provided
18 for violent conduct, the Legislature intended to provide Coastal Act remedies for victims of assault
19

20
21
22 ⁴ The FAC's boilerplate conspiracy allegations against the City are also not sufficient to state a viable claim.
23 As noted above, allegations of condoning or failing to police unlawful conduct after the fact is antithetical to a
24 conspiracy which requires each participant to agree to the unlawful conduct ahead of time. Furthermore, "'bare'
25 allegations and 'rank' conjecture do not suffice for a civil conspiracy." (*Choate v. County of Orange* (2000) 86
26 Cal.App.4th 312, 333.) A complaint "must contain more than a bare allegation [that] defendants conspired . . ."
27 (*AREI II Cases* (2013) 216 Cal.App.4th 1004, 1022.) Here, Plaintiffs' allegations City "has condoned and conspired
28 with the Individual Defendants' and Defendant Bay Boys' threatening behavior discouraging outsiders" and that
"[e]ach of the Defendants was aware that members of the Bay Boys planned to engage in the illegal activities detailed
above, cooperated and/or agreed to cooperate with members of the Bay Boys, and intended that the illegal activities"
are so generalized and factually devoid that they fail to state a viable claim for civil conspiracy as against City. (FAC,
¶ 81.)

1 or battery based on the attacker's motive. As detailed in Section B above, none of the cases cited
2 by Plaintiffs supports such an interpretation.

3 Plaintiffs' allegations the City violated the Coastal Act by conspiring to engage in criminal
4 or tortious conduct is not viable as a matter of law.

5
6 V. Plaintiffs Cannot Obtain an Injunction Under the Coastal Act's Equal Justice Amendment
7 ("EJA")
8

9 City contends⁵ Plaintiffs both lack standing to assert, and fail to assert, an Environmental
10 Justice Amendment (EJA) claim against City. (Motion, 14:9; 16:1-2.)

11 In 2017, the Legislature supplemented the Coastal Act's introductory "findings and
12 declarations" with section 30013, the EJA, which reads as follows:

13 The Legislature further finds and declares that in order to advance the principles of
14 environmental justice and equality, subdivision (a) of Section 11135 of the Government
15 Code and subdivision (e) of Section 65040.12 of the Government Code apply to the
16 commission and all public agencies implementing the provisions of this division. As
17 required by Section 11135 of the Government Code, no person in the State of California,
18 on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual
19 orientation, color, genetic information, or disability, shall be unlawfully denied full and
20 equal access to the benefits of, or be unlawfully subjected to discrimination, under any
program or activity that is conducted, operated, or administered pursuant to this division,
is funded directly by the state for purposes of this division, or receives any financial
assistance from the state pursuant to this division.

21 Although the Court rejects City's argument regarding standing requirements, it finds merit in
22 City's argument that Plaintiffs fail to state an actionable claim under the EJA.

23 City contends that, to obtain standing under the EJA, Plaintiffs must be "members of
24 underserved and disadvantaged communities who were prevented access to the beach due to their
25

26 ⁵ Additionally, City contends that the EJA does not apply retroactively to its alleged conduct occurring before
27 the EJA's January 1, 2017 effective date. (Motion, 17:27.) The Court already addressed, and dismissed, this argument
28 in overruling City's demurrer. (Ruling on Submitted Matter (Jan. 28, 2019) 4.) Thus, the Court does not address this
argument again here because a motion for judgment on the pleadings is functionally "akin to a general demurrer."
(*Wise v. Pacific Gas and Elec. Co.*, *supra*, 132 Cal.App.4th at p. 738.)

1 race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color,
2 genetic information, or disability.” (Motion, 17:8-10.) Because the EJA incorporates language
3 from Government Code Article 9.5, section 11135(a), City argues that it necessarily also imposes
4 the standing requirements in Government Code section 11139. To have standing to bring a section
5 11139 claim, a claimant must allege that he or she was injured by discriminatory practices.
6 (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1002.)

7 Standing requirements vary by statute based upon the Legislature’s intent and the statute’s
8 purpose. (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1000.)
9 The statute’s words are “the most reliable indicator of legislative intent.” (*Absher v. AutoZone,*
10 *Inc.* (2008) 164 Cal.App.4th 332, 339.) If the statute’s language is clear and unambiguous, its
11 plain meaning governs. (*Ibid.*) The court must read the statute as a whole and harmonize its parts,
12 and cannot “insert provisions omitted by the Legislature.” (*Huff v. Securitas Security Services*
13 *USA, Inc.* (2018) 23 Cal.App.5th 745, 759; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.)

14 Here, the Act’s section 30803(a) provides that “[a]ny person may maintain an action for
15 declaratory and equitable relief to restrain any violation of this division . . .” (italics added). First,
16 the Court must interpret the Act as a whole and apply section 30803(a) to the EJA instead of
17 importing Government Code section 11139. The Court must assume that if the Legislature
18 intended Government Code § 11139’s standing requirements to apply to the EJA, it would have
19 expressly incorporated section 11139.

20 The Court must also interpret “any person” to plainly mean “any person” without special
21 standing requirements. Government Code section 11139’s standing requirement would conflict
22 with Act section 30803(a)’s plain meaning that “all persons” may maintain actions under the Act;
23 the Court must read the Act as a whole rather than judicially importing and applying requirements
24 from a different code. Additionally, the Act’s language elsewhere shows that the Legislature
25 considered standing requirements when drafting the Act, but did not apply them to section 11139.
26 For example, Act sections 30801 and 30802 permit “[a]ny person *aggrieved*” to seek judicial
27 review (emphasis added). The Legislature could have likewise limited section 30803(a) to
28

1 “persons aggrieved” but did not, choosing instead “any person.” The Court must assume the
2 Legislature chose the Act’s language intentionally.

3 Nevertheless, Plaintiffs’ effort to obtain injunctive relief under the EJA fails. The EJA’s
4 plain language allows a court to enjoin a discriminatory “program or activity” that City
5 “*conducted, operated or administered pursuant to [the Coastal Act].*” (Pub. Res. Code § 30803,
6 subd. (a)) (italics added).) As City notes, all versions of the bill ultimately enacted identified the
7 issuance or non-issuance of coastal development permits as “the point at which environmental
8 justice considerations are to be made.” (Motion, p. 17; RJN, Ex. B, p. 8313⁶ [EJA “[e]liminates
9 prohibition on requiring housing policies and programs in [Local Coastal Programs]” and
10 “[a]llows the [Coastal] Commission to consider environmental justice when acting on a
11 [development permit]”]; see also Act § 30604(h).) Issuing permits is plainly government conduct
12 that operates or administers the Coastal Act. Plaintiffs’ allegations City conspired to build
13 unpermitted beach structures, selectively enforced vehicle laws, engaged in harassment and failed
14 to police harassment fail to identify conduct under a “*program or activity*” “*operated or*
15 *administered pursuant to*” the Coastal Act.

16 As a matter of law, Plaintiffs’ Fourth Amended Complaint fails to allege conduct that
17 provides a basis for injunctive relief under the EJA.

18
19 VI. Plaintiffs Submit Prima Facie Evidence Coastal Protection Ranger’s Corporate Status Is
20 Revived.

21
22 City submits evidence that on October 18, 2018, the California Secretary of State
23 suspended Plaintiff Coastal Protection Ranger’s (“CPR”) corporate status for failure to meet tax
24 requirements.⁷ City contends that CPR cannot prosecute its claim against City and that the Court
25 should strike all documents CPR filed and discovery it served since its suspension date.

26
27
28 ⁶ The Court GRANTS City’s request for judicial notice of Exhibit B.

⁷ The Court GRANTS City’s request for judicial notice of Exhibit L.

1 A California domestic corporation's "powers, rights, and privileges" may be suspended if
2 it fails to pay certain taxes and penalties. (Rev. & Tax Code § 23301.) While suspended, a
3 corporation may not prosecute or defend an action. (*Center for Self-Improvement and Community*
4 *Development v. Lennar Corp.* (2009) 173 Cal.App.4th 1543, 1552.)

5 A suspended corporation regains its corporate powers by "filing all required tax returns,
6 paying the necessary taxes, penalties, or fees due, and applying to the Franchise Tax Board for a
7 certificate of revivor. (Rev. & Tax Code § 23305.) A certificate of revivor is prima facie evidence
8 of reinstatement. (Rev. & Tax Code § 23305(a).)

9 A certificate of revivor validates "procedural steps" taken by the corporation while
10 suspended and enables it to proceed with prosecuting the action. (*Center for Self-Improvement*
11 *and Community Development v. Lennar Corp.*, *supra*, 173 Cal.App.4th at p. 1553-1554.)
12 Corporate acts such as undertaking discovery and filing and appearing on motions are validated
13 by revivor. (*Benton v. County of Napa* (1991) 226 Cal.App.3d 1485, 1490-1491.)

14 Plaintiffs submit a certificate of revivor for CPR dated March 20, 2020.⁸ Plaintiffs thus
15 have submitted prima facie evidence that CPR's corporate status has been reinstated. The
16 documents CPR served and discovery it propounded during its suspension are validated.

17 The Court DENIES City's motion to strike.

18
19 VII. Conclusion

20
21 The Court GRANTS City's Motion for Judgment on the Pleadings, allowing 30 days leave
22 to amend allegations against the City consistent with this ruling by filing a fifth amended complaint
23 not longer than 25 pages. To state a viable claim, Plaintiffs must allege that City employees
24 constructed unpermitted structures or formed agreements directing others to construct them. As
25 detailed above, the Court finds that the City's other alleged conduct is not actionable under the

26
27
28 ⁸ The Court GRANTS Plaintiffs' Supplemental Request for Judicial Notice in Opposition, Exh. 1.

Coastal Act.

Dated: July 14, 2020


AMY D. HOGUE

AMY D. HOGUE
JUDGE OF THE SUPERIOR COURT

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 7

BC629596

CORY SPENCER ET AL VS LUNADA BAY BOYS ET AL

July 14, 2020

4:40 PM

Judge: Honorable Amy D. Hogue
Judicial Assistant: Patricia Flores
Courtroom Assistant: T. Bivins

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 07/09/2020, now rules as follows:
The Motion The Motion for Judgment on the Pleadings filed by City of Palos Verdes Estates on 02/14/2020 is Granted.

The Court grants the Motion for Judgment on the Pleadings with 30 days leave to amend allegations against the City consistent with this ruling by filing a fifth amended complaint no longer than 25 pages.

The Court issues an Order Granting Defendant City of Palos Verdes Estates's Motion for Judgment on the Pleadings with Leave to Amend. The Order is signed and filed this date and incorporated by reference into the court file.

Judicial Assistant is giving notice via Case Anywhere.

Clerk's Certificate of Service By Electronic Service is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012		FILED Superior Court of California County of Los Angeles 07/14/2020 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>P. Flores</u> Deputy
PLAINTIFF: Michael Thiel et al		
DEFENDANT: Lunada Bay Boys et al		
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6		CASE NUMBER: BC629596

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Minute Order

entered herein, on 07/14/2020, upon each party or counsel of record in the above entitled action, by electronically serving the document(s) on Case Anywhere at www.caseanywhere.com on 07/14/2020 from my place of business, Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012 in accordance with standard court practices.

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 07/14/2020

By: P. Flores
Deputy Clerk

EXHIBIT C

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT SSC7 HON. AMY D. HOGUE, JUDGE PRESIDING

CORY SPENCER, ET AL.,)
)
PLAINTIFFS,)
)
V.) NO. BC629596
)
LUNADA BAY BOYS,)
ET AL.,)
)
DEFENDANTS.)
-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
THURSDAY, JULY 9, 2020; 2:00 P.M.

REPORTED BY:
ALEXANDER T. JOKO, CSR NO. 12272
COURT REPORTER PRO TEM

1 TELEPHONIC APPEARANCES:

2
3 FOR THE PLAINTIFFS: HANSON BRIDGETT LLP
4 BY: ELLIS F. RASKIN
5 KURT A. FRANKLIN
6 425 MARKET STREET
7 26TH FLOOR
8 SAN FRANCISCO, CA 94105
9

LISA M. POOLEY
GYMMEL TREMBLY
SEAN G. HERMAN
SEAN ROTSTAN
JERETT YAN

10
11 FOR THE DEFENDANT CITY OF PALOS VERDES ESTATES:

12 KUTAK ROCK LLP
13 BY: ANTOINETTE HEWITT
14 KEVIN GROCHOW
15 JAMBOREE CENTER
16 5 PARK PLAZA
17 SUITE 1500
18 IRVINE, CALIFORNIA 92614-8595
19

20
21 FOR DEFENDANT BRANT BLAKEMAN:

22 BUCHALTER
23 BY: ROBERT S. COOPER
24 1000 WILSHIRE BOULEVARD
25 SUITE 1500
26 LOS ANGELES, CA 90017
27

28
29 FOR DEFENDANTS: JEFFREY GILLETTE
30 EDWARD E. WARD, JR.
31 MARK C. FIELDS
32 J. PATRICK CAREY
33 JOHN P. WORGUL
34 COREY C. GARRARD
35 COURTNEY M. SERRATO
36 RICHARD P. DIEFFENBAC

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I N D E X

(NONE)

1 CASE NUMBER: BC629596
2 CASE NAME: SPENCER, ET AL. VS.
3 LUNADA BAY BOYS, ET AL.
4 LOS ANGELES, CALIFORNIA THURSDAY, JULY 9, 2020
5 DEPARTMENT SSC7 JUDGE AMY D. HOGUE
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: ALEXANDER JOKO, CSR NO. 12272
8 TIME: 2:00 P.M.
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD
11 IN OPEN COURT:)
12

13 THE COURT: ALL RIGHT. SO I'M CALLING NOW THE
14 SPENCER MATTER.

15 AND LET ME JUST LOOK AT WHO I HAVE ON
16 THIS. I KNOW I HAVE A NUMBER OF PEOPLE ON THE
17 TELEPHONE. I'M NOT GOING TO CHECK EVERYBODY IN.

18 I SEE MS. HEWITT.

19 WHO IS GOING TO BE SPEAKING ON BEHALF OF
20 THE PLAINTIFF?

21 MR. RASKIN: GOOD AFTERNOON, YOUR HONOR. THIS
22 IS ELLIS RASKIN FROM HANSON BRIDGETT ON BEHALF OF THE
23 PLAINTIFFS.

24 THE COURT: OKAY. GOOD. MR. RASKIN, NICE TO
25 SEE YOU.

26 SO YOU ALL GOT A LONG TENTATIVE THAT WE
27 ISSUED A LITTLE WHILE BACK, AND I TRIED TO GIVE IT TO
28 YOU IN ADVANCE.

1 LET ME JUST MAKE SURE EVERYTHING IS FINE
2 WITH THE NOTION THAT WE HAVE A COURT REPORTER PRESENT.
3 HE'S ACTUALLY IN THE COURTROOM, BUT I WILL JUST HAVE
4 THE RECORD REFLECT EVERYBODY STIPULATED TO HAVE THE
5 COURT REPORTER IN THE COURTROOM?

6 MS. HEWITT: YES.

7 MR. RASKIN: YES.

8 THE COURT: OKAY. MR. RASKIN, SINCE THE
9 TENTATIVE IS -- OH, THE COURT REPORTER IS REMOTE.
10 WE'RE STIPULATING THAT HE'S A REMOTE REPORTER. THANK
11 YOU.

12 GOVERNMENT CODE ACTUALLY SAYS THE
13 REPORTER HAS TO SIT IN THE COURTROOM, BUT IT SEEMS KIND
14 OF SILLY NOW. SO WE'RE JUST HAVING PEOPLE STIPULATE
15 AND LET THE COURT REPORTER SIT WHEREVER JUST LIKE THE
16 REST OF US.

17 SO, MR. RASKIN, I THINK THE BALL IS IN
18 YOUR COURT BECAUSE THE TENTATIVE IS LARGELY ADVERSE TO
19 THE PLAINTIFFS. I'M HAPPY TO HEAR FROM YOU, SIR.

20 MR. RASKIN: YES, YOUR HONOR. AND THANK YOU
21 VERY MUCH.

22 I WOULD RESPECTFULLY ASK THIS COURT TO
23 RECONSIDER ITS TENTATIVE.

24 AND TO THE EXTENT THAT THE COURT NOW ASKS
25 US TO SHOW THAT CITY EMPLOYEES CONSTRUCTED UNPERMITTED
26 STRUCTURES ON THE BEACH OR FORMED AGREEMENTS ASKING
27 OTHERS TO CONSTRUCT THEM, UNDER THE COASTAL ACT, WE ARE
28 NOT REQUIRED TO SHOW THAT, NOR COULD WE.

1 UNDER THE FEDUNIAK ACT DECISION - THAT'S
2 SPELLED, F-E-D-U-N-I-A-K - AND OTHER RELATED CASE LAW,
3 THE CITY IS STRICTLY LIABLE FOR THE COASTAL ACT
4 VIOLATIONS THAT HAVE OCCURRED HERE.

5 IN THE FEDUNIAK CASE, THERE WERE
6 HOMEOWNERS THAT WERE FOUND TO BE STRICTLY LIABLE UNDER
7 THE COASTAL ACT FOR PURCHASING A HOME WITH AN
8 UNPERMITTED GOLF COURSE ON IT.

9 AND, ULTIMATELY, THE SAME PRINCIPLES OF
10 STRICT LIABILITY HAVE OCCURRED HERE WHERE THE CITY IS
11 STRICTLY LIABLE FOR THE COASTAL ACT VIOLATIONS THAT
12 HAVE OCCURRED ON ITS PROPERTY THROUGH THE OBSTRUCTIONS
13 TO THE PUBLIC ACCESS OF THE BEACH AND, FURTHERMORE, FOR
14 ALLOWING UNPERMITTED STRUCTURES TO BE BUILT ON IT.

15 IF THIS COURT WOULD LIKE, WE WOULD LIKE
16 TO TAKE THIS OPPORTUNITY TO WALK THROUGH SOME OF THE
17 ISSUES IN THE TENTATIVE THAT WE BELIEVE THAT THE
18 TENTATIVE HAS INTERPRETED INCORRECTLY, BUT WE'LL DEFER
19 TO THE COURT IN TERMS OF HOW YOU WOULD LIKE TO WALK
20 THROUGH THIS ISSUE.

21 THE COURT: YOUR ARGUMENT HERE -- (TECHNICAL
22 ISSUES).

23 I'M HEARING A LOT OF ECHO -- (TECHNICAL
24 ISSUES).

25 IF EVERYONE WHO IS NOT SPEAKING COULD
26 MUTE THEIR PHONE, THAT MIGHT HELP.

27 SO WHAT I'M GOING TO DO IS ASK MS. HEWITT
28 TO RESPOND TO THAT ARGUMENT.

1 MS. HEWITT: THANK YOU, YOUR HONOR.

2 THE FEDUNIAK CASE WAS -- (TECHNICAL
3 ISSUES) IN THE CITY'S MOVING PAPERS. WE THOROUGHLY
4 DISCUSSED THAT CASE -- (TECHNICAL ISSUES).

5 THE COURT: ON THE SPENCER MATTER, CAN I
6 PLEASE KNOW THAT EVERYBODY IS MUTED ON THE PHONE ON THE
7 AUDIO L.A. COURT CONNECT OR ON THE VIDEO L.A. COURT
8 CONNECT?

9 OKAY. SAY SOMETHING, MS. HEWITT, LET'S
10 SEE IF WE GET AN ECHO.

11 MS. HEWITT: IS THIS BETTER?

12 THE COURT: YES, THAT'S BETTER.

13 MS. HEWITT: THE CASE WAS DISCUSSED AT LENGTH
14 IN THE MOVING PAPERS, AND I NOTICED IT WASN'T ADDRESSED
15 IN THE OPPOSING PAPERS. SO I FIRST WONDERED ABOUT
16 THAT.

17 BUT IN THE CASE OF FEDUNIAK, THE
18 DISTINGUISHING FACTORS IS THAT THE -- THERE WAS A
19 DISCUSSION ABOUT STRICT LIABILITY THERE. THERE WAS NO
20 DISCUSSION THERE ABOUT ASSIGNING STRICT LIABILITY TO
21 THE PUBLIC ENTITY AT ISSUE THERE.

22 IT CENTERED ON ESTOPPEL ISSUES AND
23 PRINCIPLES AS IT APPLIED TO THE COMMISSION IN THAT
24 PARTICULAR CASE. THAT'S WHAT RENDERS IT COMPLETELY
25 DISTINGUISHABLE FROM THIS CASE -- (TECHNICAL ISSUES).

26 THE COURT: A LOT OF THE ISSUES, AS I
27 UNDERSTAND IT, IS USUALLY ON YOUR END, YOUR COMPUTER OR
28 YOUR SYSTEM DOESN'T HAVE ENOUGH BANDWIDTH OR SPECS TO

1 HANDLE OUR SYSTEM. SO AFTER TODAY, EVERYBODY SHOULD
2 DOUBLE CHECK YOUR COMPUTERS. AND I KNOW A LOT OF FOLKS
3 ARE WORKING FROM HOME WHERE THE EQUIPMENT MIGHT BE A
4 LITTLE DIFFERENT THAN AT THE OFFICE. ANYWAY, THAT'S MY
5 UNDERSTANDING. BUT LET'S ALL JUST TRY TO TALK SLOWLY.

6 MS. HEWITT: YES, YOUR HONOR.

7 THE FEDUNIAK CASE -- I'M HOPING THIS IS
8 BETTER. I'M GOING TO TRY TO TALK VERY EVENLY AND
9 SLOWLY.

10 THE FEDUNIAK CASE WAS, AGAIN, ADDRESSED
11 THOROUGHLY IN THE CITY'S MOVING PAPERS. AND WE DID NOT
12 SEE IT ADDRESSED IN THE OPPOSING PAPERS.

13 IN THE FEDUNIAK CASE, THERE WAS NO
14 DISCUSSION OF STRICT LIABILITY AS IT PERTAINS TO A
15 PUBLIC ENTITY. AND, IN FACT, THAT CASE REVOLVED AROUND
16 WHETHER OR NOT ESTOPPEL COULD BE ASSERTED AGAINST THE
17 COMMISSION.

18 IN THAT CASE, THERE WAS A LONG TIME --
19 PARDON ME, YOUR HONOR.

20 THERE WAS AN ISSUE AS TO WHETHER OR NOT
21 AN EASEMENT THAT HAD BEEN PREVIOUSLY ISSUED WITH REGARD
22 TO THAT PROPERTY WITH A LONG-STANDING PERMIT ISSUE
23 COULD THEN BE USED AS AN ESTOPPEL AGAINST THE
24 COMMISSION, BECAUSE THE COMMISSION WAS KNOWN TO HAVE
25 KNOWN ABOUT THIS THREE-HOLE GOLF COURSE. THEREFORE, IN
26 THAT CASE, THE HOMEOWNERS ASSERTED, WELL, THERE SHOULD
27 BE ESTOPPEL THAT WE CAN ASSERT AGAINST IT.

28 THERE'S CERTAINLY NO DISCUSSION HERE THAT

1 WE CAN USE TO ANALOGIZE IN THIS CASE BECAUSE THERE WAS
2 NO ASSIGNMENT OF ANY STRICT LIABILITY -- (TECHNICAL
3 ISSUES). I SEE NO ISSUES IN THAT CASE THAT I CAN
4 DISCUSS AS IT PERTAINS TO A CITY'S STRICT LIABILITY.

5 IF THERE IS LANGUAGE THAT COUNSEL WOULD
6 LIKE TO REFER TO THAT DOES HAVE SUCH -- THAT DOES GIVE
7 SUCH INDICATION, I WOULD BE -- THAT WOULD BE USEFUL.
8 BUT THERE'S NO DISCUSSION OF IT. WE DID NOT SEE IT,
9 YOUR HONOR.

10 THE COURT: OKAY. I'M JUST PULLING IT UP ON
11 WESTLAW.

12 I THINK LET'S GO BACK TO YOU, MR. RASKIN.
13 YOU CAN EITHER RESPOND OR GO ON TO ANOTHER POINT,
14 WHATEVER YOU PLEASE.

15 MR. RASKIN: I'LL RESPOND BRIEFLY.

16 I WOULD LIKE TO GO TO OTHER POINTS AS
17 WELL.

18 THE FEDUNIAK CASE DOES STAND FOR THE
19 PROPOSITION THAT IT DOESN'T MATTER WHO CAUSES THE
20 VIOLATION TO OCCUR, BUT SIMPLY THAT THE PRESENCE OF THE
21 VIOLATION ON A PROPERTY OWNED BY SOMEBODY WHO IS
22 REQUIRED TO GET A CDP FOR DEVELOPMENT IS STRICTLY
23 LIABLE.

24 AND, INDEED, I SHOULD ALSO POINT OUT THAT
25 THE COASTAL ACT'S DEFINITION OF WHO THE PERSON WHO IS
26 REQUIRED TO GET DEVELOPMENTS INCLUDES CITIES. CITIES
27 ARE DEFINED BY PEOPLE IN THE CROSS-REFERENCE DEFINITION
28 SECTION 21066 OF THE PUBLIC RESOURCES CODE.

1 BUT FOR THAT MATTER, THERE'S OTHER CASE
2 LAW THAT HOLDS THE SAME PROPOSITION. FOR EXAMPLE, IN
3 THE LESLIE SALT VERSUS THE BAY CONSERVATION DEVELOPMENT
4 CORPORATION CASE, THERE, THE COURT SAID THAT THE
5 CORPORATION WAS STRICTLY LIABLE FOR FILLING SALT PONDS
6 IN THE BAY, AND IT DIDN'T MATTER WHO DID IT. THE
7 RELEVANT LOGIC HERE IS THAT, THE MERE PRESENCE OF THE
8 VIOLATION ON A PERSON'S PROPERTY GIVES RISE TO A
9 VIOLATION.

10 BUT I WOULD LIKE TO MOVE ON TO A FEW
11 OTHER POINTS AS WELL. THE COURT, IN ITS TENTATIVE,
12 TAKES A VERY, VERY NARROW VIEW OF THE TERM
13 "DEVELOPMENT" FOCUSING PRIMARILY ON LAND USE.

14 AND WE RESPECTFULLY SUBMIT THAT THAT
15 INTERPRETATION IS CONTRARY TO WELL-ESTABLISHED CASE
16 LAW, INCLUDING THE CALIFORNIA SUPREME COURT'S RECENT
17 DECISION IN THE PACIFIC PALISADES BOWL CASE. THERE,
18 THE CALIFORNIA SUPREME COURT HELD THAT DEVELOPMENTS, AS
19 A TERM, SHOULD BE GIVEN ITS MOST EXPANSIVE POSSIBLE
20 DEFINITION. THERE, THE COURT WROTE ON PAGE 796 OF ITS
21 OPINION, "THE DEVELOPMENT IS NOT RESTRICTED TO PHYSICAL
22 ALTERATION OF LAND."

23 THE COURT ITSELF ANALYZED A LONG SERIES
24 OF CASES THAT HAVE HELD THAT, UNDER THE DEFINITION OF
25 "DEVELOPMENT" UNDER SECTION 3016 OF THE COASTAL ACT,
26 THAT DEVELOPMENT INCLUDES ANY CHANGE IN THE INTENSITY
27 OF USE OF WATER OR ACCESS THERETO. THE RELEVANT TERMS
28 HERE BEING "ACCESS TO WATER" AND "ACCESS TO THE COAST."

1 THAT'S PRECISELY WHAT WE HAVE IN THIS CASE.

2 HERE, WE HAVE A LONG AND WELL-ESTABLISHED
3 PRACTICE OF THE BAY BOYS AND CITY POLICE OFFICERS
4 ACTING IN CONCERT TO DETER ACCESS TO THE COAST.

5 HERE, IN FACT, WE KNOW THAT DEFENDANT
6 BLAKEMAN THEN USED A CITY-OWNED CELL PHONE TO WORK IN
7 CONJUNCTION WITH OTHER BAY BOYS AND MEMBERS OF THE CITY
8 TO KEEP MEMBERS OF THE PUBLIC AWAY FROM LUNADA BAY.
9 THAT IS, BY ITS VERY DEFINITION, A VIOLATION OF THE
10 COASTAL ACT.

11 AND SIMILAR EXAMPLES CAN BE FOUND IN
12 OTHER CASE LAW AS WELL. FOR EXAMPLE, IN THE FIRST
13 SURFRIDER CASE, THERE, THE COURT HELD THAT PAYING A FEE
14 TO ACCESS THE BEACH WAS THE RELEVANT FACTOR IN
15 DETERMINING THAT THERE WAS DEVELOPMENTS SUBJECT TO THE
16 COASTAL ACT.

17 IT DIDN'T MATTER FOR THE COURT THAT THERE
18 WERE PHYSICAL BARRIERS. THE MERE FACT OF PAYING A FEE
19 WAS ITSELF A METAPHORICAL GATE BLOCKING ACCESS TO THE
20 COAST.

21 AND THAT'S WHAT WE HAVE HERE. EVEN
22 THOUGH THERE'S NO PHYSICAL GATE BLOCKING ACCESS DOWN TO
23 LUNADA BAY, THROUGH THE ACTIONS OF THE CITY AND THE
24 LUNADA BAY BOYS, THEY HAVE FORMED A, FOR ALL INTENTS
25 AND PURPOSES, GATE BLOCKING ACCESS TO THE COAST.

26 BUT A GATE ITSELF ISN'T EVEN NEEDED. FOR
27 EXAMPLE, IN THE SECOND SURFRIDER CASE, THE MARTINS
28 BEACH CASE, THERE, THE COURT NOTED THAT SECURITY GUARDS

1 WERE HIRED TO KEEP PEOPLE OUT OF THE BEACH.

2 AND THAT'S ESSENTIALLY WHAT HAPPENED HERE
3 WHERE PEOPLE -- HERE, THE DEFENDANTS TOOK DIRECT ACTION
4 TO BLOCK ACCESS TO THE COAST.

5 AND WE'D BE HAPPY TO GO INTO THE CASES IN
6 MORE DEPTH, IF THE COURT WOULD LIKE. BUT, AGAIN, WE
7 RESPECTFULLY SUBMIT THAT WELL-ESTABLISHED CASE LAW
8 MAKES IT CLEAR THAT THE TERM "DEVELOPMENT" SHOULD BE
9 GIVEN AN EXPANSIVE DEFINITION. AND IT INCLUDES ALL
10 FORMS OF BLOCKING ACCESS TO THE PUBLIC COAST.

11 THE COURT: I APPRECIATE THAT.

12 DID YOU WANT TO RESPOND, MS. HEWITT?

13 MS. HEWITT: YOUR HONOR, ONLY TO SAY THAT THE
14 COURT VERY THOROUGHLY ITSELF EXAMINED THOSE CASES IN
15 ITS TENTATIVE. AND I'M HAPPY TO RECITE WHAT WE THOUGHT
16 WERE EXCELLENT POINTS, BUT I'M NOT INCLINED TO DO SO
17 UNLESS THE COURT WOULD LIKE US TO GO INTO MORE DETAIL.

18 THE COURT: ALL RIGHT. SO I DID TRY TO LOOK
19 AT EVERY SINGLE CASE CITED. AND I THINK ALL OF US ARE
20 IN A LITTLE BIT OF UNCHARTERED WATERS HERE BECAUSE
21 THERE IS NO CASE THAT, TO MY THINKING, IS ANALOGOUS TO
22 THE PLAINTIFF'S CASE HERE.

23 BUT I THINK THE SENSIBLE THING IS FOR THE
24 COURT TO TAKE ANOTHER LOOK AT THE CASES THAT YOU HAVE
25 IDENTIFIED, MR. RASKIN, AND SATISFY MYSELF ONE WAY OR
26 ANOTHER WHETHER THEY WOULD SUGGEST A DIFFERENT RESULT.

27 I KNOW I DISCUSSED BOTH SURFRIDER CASES.
28 YES. LET'S JUST SEE. AND YOU ADDRESSED IT REALLY

1 BECAUSE MY POINT WAS, THIS WASN'T A CASE ABOUT
2 DEVELOPMENT, PER SE.

3 SO I'LL TAKE IT UNDER SUBMISSION.

4 MR. GROCHOW: KEVIN GROCHOW ON BEHALF OF THE
5 CITY.

6 JUST TO QUICKLY ADDRESS THE PACIFIC
7 PALISADES CASE THAT MR. RASKIN WAS JUST TALKING ABOUT.

8 THE COURT: CAN YOU GIVE ME THE CITE?

9 MR. GROCHOW: YES. THAT IS 55 CAL.4TH 783.

10 THE COURT: THANK YOU.

11 MR. GROCHOW: THE REASON WHY -- WELL,
12 MR. RASKIN QUOTED THAT TO -- FOR THE PREMISE THAT
13 DEVELOPMENT IS NOT RESTRICTED TO PHYSICAL ALTERATION OF
14 THE LAND. THAT HAS TO BE TAKEN IN THE CONTEXT OF THE
15 CASE, WHICH IS A SUBDIVISION ISSUE. AND SUBDIVISIONS,
16 WHILE NOT PHYSICALLY ALTERING LAND, ARE SPECIFICALLY
17 CONTEMPLATED WITHIN THE COASTAL ACT. AND YOU MADE THAT
18 POINT IN YOUR TENTATIVE VERY CLEARLY.

19 THE COURT: THANK YOU.

20 AND THAT NOTION THAT IT DOESN'T REQUIRE A
21 PHYSICAL ALTERATION OF THE LAND IS NOT SOMETHING NEW.
22 WE HAVE SEEN THAT IN A NUMBER OF CASES ALONG THE WAY.
23 AND, OF COURSE, I AGREE WITH THAT BECAUSE IF YOU -- YOU
24 CAN HAVE A BARRIER THAT IS NOT A PHYSICAL ALTERATION OF
25 THE LAND.

26 AND EVEN THE GUALALA CASE, I MEAN,
27 OBVIOUSLY, DEBRIS FALLING DOWN FROM FIREWORKS IS NOT A
28 PHYSICAL ALTERATION OF THE LAND. IT MAY BE A POLLUTION

1 OF THE LAND. SO I APPRECIATE THAT.

2 BUT I THINK THAT WHAT I SHOULD DO IS,
3 TAKE A LOOK AT THE CASES YOU HAVE CITED, THE FEDUNIAK
4 CASE, WHICH I PULLED UP HERE, THE PACIFIC PALISADES,
5 LESLIE SALT AND THE FIRST SURFRIDER CASE.

6 MR. RASKIN: YOUR HONOR, I THINK ALSO THE
7 SECOND SURFRIDER CASE IS DIRECTLY ON POINT AS WELL AND
8 CERTAINLY IS NOT UNCHARTERED TERRITORY, AS YOUR HONOR
9 SUGGESTED. IN THE SECOND SURFRIDER CASE, PAGE 248 OF
10 THAT OPINION, THAT'S 14 CAL.APP. 5TH 238 AT PAGE 248,
11 THERE, THERE'S THE EXACT EXAMPLE OF SECURITY GUARDS
12 BLOCKING ACCESS.

13 BUT, INDEED, THIS TYPE OF BEHAVIOR
14 HAPPENS ALL THE TIME. INDEED, COASTAL PERMITS ARE
15 GRANTED FOR ALL SORTS OF NON-PHYSICAL DEVELOPMENTS,
16 WHETHER IT BE BEACH VOLLEYBALL TOURNAMENTS, SWIM MEETS.
17 FOR EXAMPLE, THE CITY OF REDONDO BEACH WILL BE HOSTING
18 THE OPEN WATER SWIM OLYMPICS WHEN THE OLYMPICS COME TO
19 LOS ANGELES. THERE, THE CITY IS TALKING ABOUT ITS NEED
20 TO GET COASTAL DEVELOPMENT PERMITS FOR THE SWIM
21 COMPETITION.

22 BY THIS COURT'S VERY LOGIC, THE EXACT
23 CONDUCT THAT'S ALLEGED HERE GIVES RISE TO A COASTAL ACT
24 VIOLATION.

25 AND, IF I MAY, WE SHOULD ALSO EMPHASIZE
26 THAT WHAT THE COURT IS ASKING US TO DO HERE, TO SHOW
27 THAT THE CITY EMPLOYEES ACTUALLY CONSTRUCTED PHYSICAL
28 STRUCTURES ON THE BEACH OR FORMED AGREEMENTS TO DO SO,

1 THAT'S SOMETHING THAT, WELL, ONE, WE DON'T NEED TO
2 PROVE. AND, SECOND, THAT WE CAN'T PROVE.
3 AND WE WOULD RESPECTFULLY ASK THAT, IF
4 THIS COURT IS INCLINED TO STICK TO THE TENTATIVE, THAT
5 THE COURT SIMPLY STAY THE PROCEEDINGS WITH RESPECT TO
6 THE REMAINING DEFENDANTS SO THAT WE CAN ADJUDICATE THIS
7 ISSUE ON APPEAL.

8 THE COURT: I'M NOT ADVERSE TO THAT. I MIGHT
9 EVEN BE WILLING TO CERTIFY IT. ALTHOUGH, MY EXPERIENCE
10 WHEN I'VE CERTIFIED SOMETHING ON APPEAL, I DON'T THINK
11 THE COURT OF APPEALS PAYS ANY ATTENTION, BUT WE CAN
12 TRY. I'M NOT ADVERSE TO THAT AT ALL.

13 MS. HEWITT: YOUR HONOR, I WANTED TO ALSO
14 EMPHASIZE, THE LESLIE SALT CASE WAS ALSO ADDRESSED AT
15 LENGTH IN THE CITY'S MOVING PAPERS. SO THERE IS A LONG
16 DISCUSSION IN THERE, YOUR HONOR, ABOUT THAT. AND IT IS
17 NOT MENTIONED IN THE OPPOSITION FOR PLAINTIFF.

18 AND THE REASON -- LET ME JUST ADD THAT
19 THE REASON WE DISCUSSED THE FEDUNIAK AND LESLIE SALT IS
20 BECAUSE THAT WAS (TECHNICAL ISSUES) PLAINTIFF CITED IN
21 THE COMPLAINT. SO WE WERE TRYING TO BE FORWARD
22 THINKING AND ADDRESS THAT IN OUR MOVING PAPERS. THE
23 FACT THAT THEY DID NOT ADDRESS THAT IN THEIR OPPOSING
24 PAPERS, PERHAPS IT'S NOT ON POINT.

25 BUT, AGAIN, GIVEN -- LOOKING AT YOUR
26 HONOR'S DISCUSSION IN THE TENTATIVE THAT THIS IS
27 UNCHARTERED WATERS, IT'S NOT ONLY REALLY SORT OF
28 UNCHARTERED WATERS, BUT IT'S A HUGE EXTENSION OF THE

1 ACT'S INTENT BECAUSE THESE PIECES THAT WE'RE DISCUSSING
2 HERE DO NOT CONTEMPLATE PLACING THIS SORT OF LIABILITY
3 ON THE CITY FOR ACTION THAT IS JUST NOT TAKEN, WHICH
4 IS, AGAIN, A POINT THAT YOUR HONOR DISCUSSED AT LENGTH
5 IN THE TENTATIVE.

6 (TECHNICAL ISSUES) -- SO, THEREFORE, THE
7 CASE LAW THAT WE'RE TALKING ABOUT HERE IS JUST NOT ON
8 POINT BECAUSE I DON'T BELIEVE, YOUR HONOR, ANYBODY HAS
9 CONTEMPLATED IMPOSING LIABILITY ON A CITY MERELY FOR
10 HOW IT IMPLEMENTS ITS LOCAL COASTAL ACT PLAN. AND I
11 KNOW YOUR HONOR HAS EXTENSIVE EXPERIENCE WITH THE
12 COASTAL ACT. AND THAT WAS -- I BELIEVE THAT CAME OUT
13 VERY CLEARLY IN THE TENTATIVE RULING, YOUR HONOR.

14 THE COURT: IT'S AN INTERESTING QUESTION
15 BECAUSE, YOU KNOW, I'M TAKING THE POINT OF VIEW THAT
16 "USE" IS A TERM OF ART IN THE ACT. BUT YOU COULD
17 ARGUE, AS THE PLAINTIFFS DO, THE PLAIN LANGUAGE USE OF
18 WATER, IT'S JUST THE PLAIN LANGUAGE SENSE OF USE THAT
19 WE MIGHT USE IN EVERYDAY CONVERSATION. SO THAT'S WHY
20 IT MAY BE SOMETHING THAT THE COURT OF APPEALS FINDS
21 INTERESTING AND MIGHT EVEN TAKE UP EARLY.

22 BUT LET'S JUST THINK THIS THROUGH,
23 MR. RASKIN, FOR A MINUTE. UNDER MY TENTATIVE WHERE
24 I'VE GIVEN YOU JUST SUCH A NARROW BASIS FOR AMENDING,
25 YOU'RE BASICALLY SAYING, WE CAN'T ALLEGE THAT THE CITY
26 TOOK ACTION BEFOREHAND OR ACTUALLY PARTICIPATED. THEN
27 THE JUDGMENT OR THEN THE DEMURER WOULD BE SUSTAINED.
28 AND THERE WOULD BE A JUDGMENT ENTERED AGAINST THE CITY,

1 WHICH WOULD BE AN APPEALABLE ORDER. SO I THINK YOU
2 WOULD BE IN GOOD SHAPE, ACTUALLY.

3 AND AS FOR THE REST OF THE CASE, IT'S UP
4 TO YOU HOW YOU WANT TO PROCEED.

5 MR. RASKIN: I THINK THAT'S RIGHT. AND WE
6 WOULD RESPECTFULLY REQUEST A STAY WITH RESPECT TO THE
7 OTHER INDIVIDUAL DEFENDANTS.

8 BUT I THINK IT ALSO BEARS EMPHASIS THAT,
9 WE NARROWED THE COMPLAINT DOWN TO ONLY 25 PAGES AT YOUR
10 HONOR'S REQUEST. THERE ARE PREVIOUS VERSIONS OF OUR
11 COMPLAINT THAT INCLUDE MUCH MORE DETAILED FACTUAL
12 ALLEGATIONS. AND SO, TO SOME EXTENT, WE'VE BEEN
13 HAMSTRUNG BY THE COURT'S OWN REQUEST THAT WE LIMIT THE
14 LENGTH AND EXTENT OF OUR PLEADINGS HERE.

15 BUT I WOULD LIKE TO GO BACK TO ONE OF THE
16 SUBSTANTIVE POINTS THAT WAS ADDRESSED EARLIER. THIS
17 ISN'T A CASE ABOUT THE IMPLEMENTATION WITH RESPECT TO
18 DESIGNING A LOCAL COASTAL PROGRAM OR IMPLEMENTING
19 ORDINANCE. AND, IN THAT SENSE, THE YOST CASE IS
20 DISTINGUISHABLE BECAUSE, THERE, THAT WAS SIMPLY A CASE
21 ABOUT THE CITY DESIGNING ZONING FOR AN AREA.

22 HERE, THIS IS A SEPARATE ISSUE. THIS IS
23 ABOUT STRICT REQUIREMENTS TO GRANT PERMITS WHENEVER
24 THERE IS ACTIVITY THAT FITS THE DEFINITION OF
25 "DEVELOPMENT."

26 AND IT BEARS EMPHASIS TOO THAT THE
27 DEFINITION OF "DEVELOPMENT" INCLUDES A FAR MORE
28 EXPANSIVE CONSTRUCTION OF ACTIONS THAN SIMPLY USE OF

1 LAND. THAT'S ONLY ONE NARROW PART OF SECTION 3016. IT
2 ALSO INCLUDES ACTIVITIES THAT IMPACT ACCESS TO WATER
3 SEPARATE FROM THE TERM "USE." AND THAT'S THE PORTION
4 OF THE DEFINITION THAT THE SUPREME COURT RELIED ON IN
5 PACIFIC PALISADES BOWL AND OTHER CASES IN DETERMINING
6 THAT THE TERM "DEVELOPMENT" SHOULD BE GIVEN A RATHER
7 EXPANSIVE DEFINITION.

8 AND, RESPECTFULLY, THE TENTATIVE'S FOCUS
9 ON THE TERM "USE" IS INCORRECT BECAUSE, HERE, WE HAVE
10 SHOWN THAT CITY POLICE ACTIVITY OF TARGETING PEOPLE
11 COMING TO THE COAST, OF SELECTED ENFORCEMENT OF LAWS
12 AND THE CITY POLICE WORKING IN CONJUNCTION WITH THE
13 LUNADA BAY BOYS IS EXACTLY THE TYPE OF ACTIVITY THAT
14 FITS THE DEFINITION OF IMPACTING PUBLIC ACCESS TO
15 WATER.

16 THE COURT: THAT'S THE RUB, SO I HEAR YOU.
17 AND I THINK THAT'S THE MOST DIFFICULT, PROBABLY, ISSUE
18 IN MY TENTATIVE.

19 BUT, AGAIN, I THINK IF YOU LOOK AT THE
20 COASTAL ACT IN ITS HISTORICAL CONTEXT, IT'S REALLY
21 ABOUT LAND USE, WATER USE AND USE OF LAND, USE OF
22 RESOURCES, NOT ABOUT THE PERSONAL CONDUCT THAT COULD
23 BE, ARGUABLY, CRIMINAL CONDUCT OR FAILURE TO ENFORCE
24 LAWS.

25 THERE ARE MANY OTHER LAWS THAT CAN BE
26 ENFORCED THAT PREVENT THAT CONDUCT. IF THERE WERE
27 ASSAULTS HAPPENING, THEY COULD BE PROSECUTED CRIMINALLY
28 OR CIVILLY.

1 BUT THE QUESTION IS, DOES THE COASTAL ACT
2 REACH THIS CONDUCT OR ARE THERE OTHER LAWS THAT PROVIDE
3 A REMEDY FOR PEOPLE WHO HAVE BEEN WRONGED?

4 MR. RASKIN: I WOULD RESPECTFULLY SUBMIT, YOUR
5 HONOR, THAT IF WE TAKE THE TENTATIVE'S CONCLUSION TO
6 ITS LOGICAL CONCLUSION, WE WOULD READOUT THE LANGUAGE
7 OF ACCESS TO WATER OUT OF THE STATUTE. AND THAT'S
8 CLEARLY NOT WHAT THE LEGISLATURE INTENDED.

9 AND, FOR THAT MATTER, THERE ARE OTHER
10 CASES THAT DO SUPPORT ACTIVITIES BEING ACTIONABLE UNDER
11 THE COASTAL ACT. THE MARTINS BEACH CASE IS ONE
12 EXAMPLE. GREENFIELD VERSUS MANDALAY SHORES IS ANOTHER
13 WHERE, THERE, THE COURT LOOKED AT CITY ACTION THAT
14 PREVENTED PEOPLE FROM STAYING IN SHORT-TERM RENTALS.

15 SO THERE ARE PLENTY OF CASE LAW EXAMPLES
16 TO SUPPORT THE EXPANSIVE DEFINITION OF "ACCESS" AS
17 BEING ACTIONABLE UNDER THE COASTAL ACT.

18 MR. HEWITT: AGAIN, THE COURT ADDRESSED
19 GREENFIELD AT LENGTH IN ITS TENTATIVE. AGAIN, I'M NOT
20 SURPRISED. I'M NOT SURPRISED BASED ON THE COURT'S
21 INTIMATE KNOWLEDGE OF THE COASTAL ACT.

22 I THINK THAT IT MAY NOT BE -- I DON'T
23 BELIEVE IT'S CORRECT THAT YOU CAN READOUT THE USE OF
24 WATER IF THE TENTATIVE WERE TO BECOME THE ORDER. AS WE
25 DISCUSSED IN THE MOTION AND IN THE EXTENSIVE
26 LEGISLATIVE HISTORY OF THIS PARTICULAR ACT, THERE WERE
27 VERY SPECIFIC SITUATIONS THAT WERE BEING IMAGINED AT
28 THE TIME. USE OF WATER, ACCESS TO WATER AT THE TIME

1 MEANT BARRING PEOPLE FROM BEING ABLE TO GET TO THE
2 WATER DUE TO SOME PHYSICAL EASEMENT.

3 PUTTING THE GATE, THE GATE IN --
4 (TECHNICAL ISSUE) -- ACTION, THE GATE CAME DOWN. A
5 PRIVATE OWNER OF PROPERTY THEN TOOK OFF THE -- PUT ON A
6 SIGN THAT SAID, "NO MORE FREE PARKING" LITERALLY AND
7 FIGURATIVELY BECAUSE THE PREVIOUS OWNER ALLOWED
8 PARKING, ALLOWED PEOPLE TO USE THAT ROAD. AND THEN
9 WHEN HE BOUGHT IT, HE SAID, "NO MORE."

10 SO WHAT IS -- I THINK WHAT'S IMPORTANT IN
11 ALL THESE CASES WE'RE DISCUSSING, ESPECIALLY THESE
12 CASES WE ALL ADMIT ARE GENERALLY PRIVATE OWNERS OF
13 PROPERTY. IN NO PLACE HAS THERE BEEN AN EFFORT TO THEN
14 BRING THE CITY INTO THE CASE, EITHER BY THE COMMISSION
15 OR BY OTHER PRIVATE CITIZENS TO BRING THE CITY INTO THE
16 CASE MERELY FOR NOT DOING SOMETHING ABOUT PRIVATE
17 CONDUCT THAT THEY SEE GOING ON OUT THERE. THERE JUST
18 ISN'T THAT THERE. AND I THINK THAT SPEAKS VOLUMES
19 HERE.

20 THERE ARE A MYRIAD OF CASES THAT ARE
21 GOING ON, I'M SURE. I READ (TECHNICAL ISSUES)
22 LOW-INCOME HOUSING -- (TECHNICAL ISSUES).

23 SO I THINK, AS IT AFFECTS THE MOTION, TO
24 BRING THIS CASE TO WHAT THE PLAINTIFFS ARE LOOKING AT
25 WOULD OPEN UP A CAN OF WORMS THAT FAR EXCEEDS WHAT THE
26 ACT WAS MEANT TO -- (TECHNICAL ISSUES).

27 THE COURT: OKAY.

28 MR. RASKIN: IF I MAY, YOUR HONOR?

1 THIS IS THE CITY'S LAND. IT'S THE CITY'S
2 PROPERTY WHERE THIS VIOLATION IS OCCURRING. AND THAT'S
3 PARTLY WHY WE BROUGHT IN THE DISCUSSION ABOUT STRICT
4 LIABILITY HERE.

5 THERE'S NO NEED TO GET TO LEGISLATIVE
6 HISTORY HERE BECAUSE THE PLAIN LANGUAGE OF THE STATUTE
7 USES THE TERM "ACCESS TO WATER." AND SO THE CASE LAW
8 IS CLEAR THAT LEGISLATIVE HISTORY IS NOT NECESSARY WHEN
9 THE PLAIN LANGUAGE OF THE STATUTE IS CLEAR, AS IS THE
10 CASE HERE.

11 AND SO FOR THAT MATTER, THERE ARE CASES,
12 INDEED, WHERE CITIES ARE REQUIRED TO GET COASTAL
13 DEVELOPMENT PERMITS FOR THEIR ACTION. THE GREENFIELD
14 CASE IS ONE EXAMPLE WHERE THE COURT OF APPEAL SAID THAT
15 YOU NEED A CDP TO CHANGE A SYSTEM THAT IMPACTS ACCESS
16 TO WATER.

17 SO, AGAIN, WE WOULD SUBMIT THAT THIS IS
18 NOT UNCHARTERED TERRITORY. THE LANGUAGE OF THE STATUTE
19 IS CLEAR. AND THE ALLEGATIONS THAT WE HAVE SHOWN
20 CLEARLY SUPPORT THE CITY IS IN FACT LIABLE UNDER THE
21 PLAIN TERMS OF THE COASTAL ACT.

22 THE COURT: I DIDN'T THINK THAT CITIES OWNED
23 THE BEACH.

24 WHO OWNS THE BEACH?

25 MR. RASKIN: THE CITY DOES. IT'S CITY
26 PROPERTY.

27 THE COURT: MS. HEWITT, CAN YOU HEAR US?

28 SHE CAN'T HEAR US.

1 MR. RASKIN: IT'S ALLEGED THAT IN THE
2 COMPLAINT THAT IT'S CITY-OWNED PROPERTY. IT'S TRUE AND
3 IT'S ALSO ALLEGED IN THE COMPLAINT.

4 THE COURT: OKAY. MS. HEWITT?

5 ALFREDO, ONE OF THE ATTORNEYS CAN NO
6 LONGER HEAR US.

7 MR. RASKIN: IF I MAY, YOUR HONOR?

8 THE BEACH WAS GRANTED TO THE CITY OF
9 PALOS VERDES ESTATES PUBLIC TRUST. IT WAS GRANTED BY
10 THE STATE LAND COMMISSION, I BELIEVE, NEARLY A HUNDRED
11 YEARS AGO. IT IS HELD IN TRUST BY THE CITY FOR THE
12 PUBLIC'S BENEFIT.

13 THE COURT: OKAY. THAT'S GOOD TO KNOW. I'M
14 JUST CONCERNED WE'RE HAVING AN EX PARTE CONVERSATION.

15 MR. RASKIN: MR. GROCHOW IS HERE. HE
16 REPRESENTS THE CITY AS WELL. SO IT WOULDN'T BE EX
17 PARTE.

18 THE COURT: OKAY.

19 MR. GROCHOW: THAT'S CORRECT, YOUR HONOR.

20 HOWEVER, THAT DOES NOT PUT IT INTO
21 CONTEXT WITH GREENFIELD AT ALL. GREENFIELD INVOLVED A
22 PERMIT THAT NEEDED TO BE ACTED ON. AND THE COURT
23 MERELY HELD THAT THE CITY AND THE COASTAL COMMISSION
24 NEEDS TO ADDRESS THAT PERMIT APPLICATION. AND THAT'S
25 WHERE YOU DISTINGUISH THAT IN THIS TENTATIVE, YOUR
26 HONOR. THERE'S BEEN NO PERMIT APPLICATION FOR THE ROCK
27 FORT OR ANY OF THE OTHER DEVELOPMENTS. IT'S CLEARLY
28 DISTINGUISHABLE ON THAT GROUND.

1 THE COURT: WILL YOU E-MAIL MS. HEWITT AND
2 TELL HER WE THINK THE PROBLEM IS ON HER END, AND SHE
3 MIGHT WANT TO GO OUT AND COME BACK AGAIN?

4 WE HAVE AN ORANGE FLAG NEXT TO HER NAME
5 THAT SAYS "LOW," SO WE THINK SHE HAS A BAD CONNECTION.

6 MR. GROCHOW: I WILL LET HER KNOW.

7 THE COURT: OKAY.

8 MR. GROCHOW: SHE'S TRYING TO RECONNECT.

9 THE COURT: IS THAT RIGHT THAT, BASICALLY, THE
10 CITY DOES OWN THE BEACH IN TRUST FOR THE PUBLIC, ET
11 CETERA AND SO ON?

12 MR. GROCHOW: THAT'S RIGHT.

13 THERE'S A FOUR-AND-A-HALF MILE STRETCH OF
14 COASTLINE THAT THE CITY OWNS. IT COMBINED THE TITLE
15 LAND GRANT AND THE SHORELINE PRESERVE TOGETHER. AND
16 SO, YEAH, THAT IS CORRECT.

17 THE COURT: SO IS IT JUST PATCH WORK? I WAS
18 THINKING ABOUT WILL ROGERS STATE PARK, WHICH IS A BEACH
19 PARK. SO IT MUST JUST BE A PATCH WORK OF CITY-STATE
20 OWNERSHIP, I SUPPOSE.

21 MR. GROCHOW: THE COASTLINE ITSELF, THERE
22 MIGHT BE SOME STATE LAND MIXED IN. I'M NOT FAMILIAR
23 ABOUT THAT.

24 BUT THE COASTLINE ITSELF IS PRETTY
25 CONTINUOUS AND NON-BROKEN UP TO THE BORDER OF THE
26 SHORELINE PRESERVE, WHICH BY IN LARGE MATCHES THE
27 COASTAL ZONE, BUT NOT EXACTLY.

28 THE COURT: OKAY. THIS IS WAY TOO DEEP INTO

1 THE LAND USE FOR ME, BUT IT'S INTERESTING.

2 MR. RASKIN: BY WAY OF BACKGROUND, NEARLY
3 EVERY COASTLINE HAS BEEN GRANTED TO LOCAL GOVERNMENT BY
4 THE STATE LAND COMMISSION.

5 THE COURT: OKAY. HAVING GROWN UP IN A
6 LAND-LOCKED STATE BACK EAST, I JUST DON'T KNOW ABOUT
7 THESE THINGS.

8 ALL RIGHT. MS. HEWITT, CAN YOU HEAR US?

9 I CAN'T HEAR YOU.

10 I THINK SHE'S GOT A BAD CONNECTION.

11 WELL, I THINK, MR. GROCHOW, WITH YOU
12 PRESENT, WE'RE OKAY.

13 MY SUGGESTION IS AS FOLLOWS: THAT I'M
14 GOING TO TAKE IT UNDER SUBMISSION. AND I'M GOING TO
15 SET A STATUS CONFERENCE IN ABOUT A MONTH, AND WE'LL SEE
16 WHERE WE ARE.

17 WE MAY HAVE A NOTICE OF APPEAL OR A
18 PETITION FOR WRIT OF MANDATE. BUT IF I GRANT LEAVE TO
19 AMEND IN 30 DAYS AND WE GET BACK TOGETHER IN 40 DAYS,
20 WE'LL KNOW WHAT THE PLAINTIFFS HAVE ELECTED TO DO.

21 DOES THAT MAKE SENSE TO EVERYBODY?

22 MR. FRANKLIN: IT DOES, YOUR HONOR. THIS IS
23 KURT FRANKLIN.

24 AND WE CAN RAISE IT AT THE TIME. BUT
25 BECAUSE THERE ARE COASTAL ACT CLAIMS AGAINST THE
26 INDIVIDUALS, DEPENDING ON WHAT YOU DO, I WOULDN'T BE
27 SURPRISED IF WE RECEIVE SIMILAR MOTIONS, WHICH WOULD
28 MAKE SENSE FOR US TO APPEAL IT.

1 THE COURT: WE WILL HAVE TO THINK ALL OF THAT
2 THROUGH AS A WAY TO MANAGE THE CASE MOST EFFICIENTLY.

3 SO THE COURT WILL TAKE IT UNDER
4 SUBMISSION. WE'LL SET A FURTHER STATUS CONFERENCE.

5 ALFREDO, CAN YOU GIVE ME A DATE IN
6 MID-AUGUST, PLEASE?

7 THE CLERK: AUGUST 26 AT 11:00.

8 THE COURT: AUGUST 26TH AT 11:00 OKAY?

9 THAT'LL JUST BE A FURTHER STATUS
10 CONFERENCE. I WILL HAVE RULED ON THIS BY THEN.

11 AND IF I STAY WITH THE TENTATIVE RULING,
12 IT LARGELY MOOTS THE DISCOVERY DISPUTES WITH THE CITY.
13 SO WE'LL HAVE TO TALK ABOUT WHAT ELSE IS NEEDED TO
14 MANAGE THE CASE FORWARD.

15 MR. FRANKLIN: IF YOU STAY WITH THE TENTATIVE,
16 PLAINTIFFS ARE UNABLE TO AMEND TO ALLEGE THAT THE CITY
17 WAS ACTIVELY INVOLVED IN THE CONSTRUCTION OF THE ROCK
18 FORT.

19 THE COURT: DID SOMEONE TRY TO SPEAK?

20 MR. COOPER: ROBERT COOPER ON BEHALF OF
21 DEFENDANT BRANT BLAKEMAN.

22 WE WERE GOING TO HAVE A CMC TODAY. AND I
23 TAKE IT THAT WE'RE GOING TO KICK THAT AND HAVE IT ON
24 AUGUST 26, WHICH IS FINE.

25 BUT WE HAVE A TRIAL DATE SITTING OUT
26 THERE. WE HAVE AN MSJ DATE SITTING OUT THERE. AND WE
27 WROTE SOME NOTES, AND YOU REPLIED IMMEDIATELY EVERY
28 TIME WE DID THAT. WE KNOW THOSE DATES ARE SORT OF NOT

1 REALLY EXISTING ANYMORE. BUT MAYBE YOU SHOULD
2 OFFICIALLY VACATE THEM FOR RESETTING SO WE'RE NOT --
3 THERE WAS A SUMMARY JUDGMENT DATE. WE ALL AGREED,
4 PLAINTIFFS AND DEFENDANTS, TO VACATE IT AND GET A NEW
5 DATE WITH ALL THE STUFF GOING ON AND, OF COURSE, THE
6 FACT THAT WE HAD NO ACCESS TO THE COURT. MAYBE VACATE
7 THE TRIAL DATE AND MSJ DATE THAT ARE PENDING SO THAT WE
8 CAN SET THEM ON AUGUST 26TH.

9 THE COURT: OKAY. ALFREDO, I CAN'T PULL UP
10 E-COURT.

11 WHAT IS THE TRIAL DATE THAT WE HAVE SET?

12 THE CLERK: I SHOW DECEMBER 14TH, YOUR HONOR.
13 I DON'T SEE ANY OTHER DATES, UNLESS IT'S A RESERVED
14 DATE.

15 THE COURT: UNFORTUNATELY, I CAN'T HEAR YOU.

16 NOVEMBER 14TH?

17 MR. COOPER: SEPTEMBER 14TH.

18 THE COURT: SEPTEMBER 14TH. AND THERE'S
19 PROBABLY AN FSC DATE RIGHT BEFORE IT.

20 SO I AGREE WITH YOU. I THINK I SHOULD
21 VACATE THOSE DATES. AND LET'S CALL THE AUGUST 26
22 STATUS CONFERENCE A TRIAL SETTING CONFERENCE TO REMIND
23 US TO THINK ABOUT WHAT WE'RE GOING TO DO.

24 THE MSJ DATE WAS A HEARING DATE OR
25 DEADLINE-FOR-FILING DATE?

26 MR. COOPER: YOUR HONOR, I THINK I'M THINKING
27 OF THE FACT THAT WE HAD 75 DAYS PRIOR TO THAT AS A DATE
28 THAT WAS COMING AND GOING WHEN WE WERE LAST WRITING YOU

1 A NOTE. SO WE ALL AGREED THAT DATE SHOULDN'T BIND
2 ANYBODY, BUT IT WASN'T A DATE ON THE COURT'S CALENDAR,
3 PER SE. IT WAS JUST IN ACCORD WITH THE TRIAL DATE.

4 MR. RASKIN: WE AGREE.

5 THE COURT: I'VE VACATED THE TRIAL DATE, SO
6 YOU SHOULD BE GOOD.

7 MR. COOPER: THAT SHOULD COVER IT.

8 THE CLERK: I SHOW THAT WE HAVE A RESERVED MSJ
9 DATE AUGUST 4, AUGUST 6 AND AUGUST 12.

10 DO YOU WANT TO REMOVE THAT FROM OUR
11 INFORMAL CALENDAR?

12 THE COURT: VACATE ALL OF THOSE RESERVED
13 DATES.

14 THE CLERK: OKAY.

15 THE COURT: YES, PLEASE. THANK YOU.

16 SO IS NOTICE WAIVED THAT I'VE TAKEN IT
17 UNDER SUBMISSION, AND WE HAVE SET FURTHER STATUS
18 CONFERENCE, AND WE VACATED SOME DATES?

19 MR. RASKIN: NOTICE WAIVED.

20 MR. GROCHOW: THE STAY ON DISCOVERY TO THE
21 CITY, THAT REMAINS IN PLACE WHILE THIS IS UNDER
22 SUBMISSION; CORRECT?

23 THE COURT: CORRECT. I THINK THAT'S FAIR.

24 SINCE I DON'T KNOW THAT I HAVE EVERYBODY
25 ON THE LINE, I THINK I BETTER HAVE PLAINTIFFS GIVE
26 NOTICE, ACTUALLY, BECAUSE I JUST CAN'T BE CERTAIN WITH
27 THE TECHNOLOGY.

28 MR. RASKIN: WE'LL DO SO, YOUR HONOR.

1 ON THE STAY AT LEAST, VIS-A-VIS THE CITY,
2 MAY IT BE RECIPROCAL?

3 THE COURT: YES. WE'RE GOING TO TREAD WATER
4 UNTIL AUGUST 26TH AS TO ANY PROCEEDINGS BETWEEN THE
5 CITY AND THE PLAINTIFFS FOR SURE.

6 OKAY. WELL, I APPRECIATE EVERYBODY'S
7 BRIEFING ON IT. AND YOU MADE SOME GOOD POINTS,
8 MR. RASKIN. I'M GOING TO THINK ABOUT IT.

9 AND MS. HEWITT AS WELL, OF COURSE.

10 THANK YOU VERY MUCH.

11 MR. RASKIN: THE TIME OF THE STATUS
12 CONFERENCE, YOUR HONOR?

13 THE COURT: 11:00 O'CLOCK IS THE DATE FOR THE
14 STATUS CONFERENCE.

15 EVERYBODY GOT THAT?

16 THANK YOU.

17 MR. RASKIN: THANK YOU, YOUR HONOR.

18 THE COURT: THANK YOU.

19 (END OF PROCEEDINGS)

20

21

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3
4 DEPARTMENT SSC7 HON. AMY D. HOGUE, JUDGE PRESIDING

5
6 CORY SPENCER, ET AL.,)
7)
8 PLAINTIFFS,)
9)
10 V.) NO. BC629596
11 LUNADA BAY BOYS,)
12 ET AL.,)
13)
14 DEFENDANTS.)
15)
16)
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28)

16 I, ALEXANDER T. JOKO, COURT REPORTER PRO TEM,
17 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR
18 THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
19 FOREGOING PAGES COMPRISE A FULL, TRUE, AND CORRECT
20 TRANSCRIPT OF THE PROCEEDINGS HELD IN THE
21 ABOVE-ENTITLED MATTER ON JULY 9, 2020.

22
23 DATED THIS 13TH DAY OF JULY, 2020.

24
25
26 

27 ALEXANDER T. JOKO

28 CSR NO. 12272

CERTIFICATE/PROOF OF SERVICE

Spencer, et al. v. Lunada Bay Boys, et al.

USDC Central District Case No. 2:16-cv-02129-MWF-RAO
I, Joanne Kenney, declare:

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 5 Park Plaza, Suite 1500, Irvine, California 92614-8595.

On **July 15, 2020**, I electronically filed the attached document:

**SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE IN SUPPORT
OF DEFENDANTS CITY OF PALOS VERDES ESTATES AND CHIEF
OF POLICE JEFF KEPLEY'S SUR-REPLY TO PLAINTIFFS' MOTION
TO STAY ENFORCEMENT OF COSTS JUDGMENT**

with the Clerk of the court using the CM/ECF system which will then send a notification of such filing to the following:

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I hereby certify that I deposited such envelope in the mail at Irvine, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice for collection and processing documents for

1 mailing. Under that practice, this(these) document(s) will be deposited with the
2 U.S. Postal Service on this date with postage thereon fully prepaid at Irvine,
3 California in the ordinary course of business. I am aware that on motion of the
4 party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing in affidavit.

5
6 I hereby certify that I am employed in the office of a member of the Bar of
this Court at whose direction the service was made.

7
8 I declare under penalty of perjury under the laws of the State of California
that the above is true and correct.

9 Executed on **July 15, 2020**, at Irvine, California.

10
11 
12 Margo Reyes

SERVICE LIST

Spencer, et al. v. Lunada Bay Boys, et al.

USDC Central District Case No. 2:16-cv-02129-MWF-RAO

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